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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD34

Special Supplemental Nutrition Program for Women, Infants and Children: Exclusion of Military Housing Payments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to incorporate a non-discretionary provision in the Farm Security and Rural Investment Act of 2002, that affects the WIC application and certification process. In determining an applicant's income eligibility for WIC, this final rule provides WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on or off military installations.

EFFECTIVE DATE: This rule is effective May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Debbie Whitford, Monday through Friday during regular business hours (8:30 a.m.–5 p.m.) at (703) 305–2746.

SUPPLEMENTARY INFORMATION:

1. Why Is This Regulation Necessary?

Section 4306 of the Farm Security and Rural Investment Act of 2002, (Pub. L. 107–171), enacted May 13, 2002, amends section 17(d)(2)(B)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786), to allow WIC State agencies the option to exclude housing allowances paid to military personnel for privatized on-base or off-base housing in determining income eligibility for the WIC Program. In accordance with Pub. L. 107–171, this provision became effective May 13, 2002.

2. Why Is This Regulation a Final Rule?

This regulation is a final rule because the Department does not have discretion in how State agencies implement this provision. The provision, as set forth in this final rule, merely reflects the legislation. Thus, it is considered a non-discretionary provision.

3. What Does This Regulation Require of WIC Agencies?

This regulation provides WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base. Therefore, in this final rule section 246.7(d)(2)(iv)(A)(*1*) of the WIC Program regulations is revised to include this State agency option. Previously, WIC legislation and regulations provided State agencies the option to exclude military housing allowances provided to military service personnel residing off military installations from consideration as income in determining WIC income eligibility. Since on-base housing has traditionally been provided to families without charge or indication of a cash allowance on their paychecks, WIC has considered this an in-kind benefit that has not been counted as income for WIC eligibility purposes. Therefore, the provision in Pub. L. 107–171 provides State agencies the option to extend the income exclusion to include privatized on-base military housing allowances.

The privatization of military housing is intended to provide improved, quality housing for military families living on base by contracting with private developers. An allowance is paid directly to military personnel that can be used only for rent. The household does not have the discretion to use this allowance for any other purpose, even though it is provided as a cash benefit and reflected as such on the employee's Leave and Earnings Statement (LES) as a Basic Allowance for Housing (BAH). Off-base military housing allowances are also reflected on the LES as BAH.

Since payments for privatized housing are reflected as BAH on military pay stubs, WIC agencies cannot readily determine whether this is an off-base or on-base housing allowance. Further, it is clear based on enactment of this provision that Congress intends WIC State agencies to have the option to provide consistent treatment of military housing allowances in determining WIC income eligibility. Therefore, if a WIC State agency chooses to exclude BAH, in effect, it has chosen to exclude off-base housing allowances and payments for privatized on-base housing.

4. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, Administrator, Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule modifies WIC application and certification procedures. Therefore, the effect of this change will be primarily on WIC applicants and State and local WIC agencies, some of which are small entities. However, the impact on small entities is not expected to be significant.

Paperwork Reduction Act

This final rule does not contain new reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). The information collection burden associated with certification and eligibility of WIC participants is approved under OMB No. 0584–0043.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service has determined that this final rule does not have Federalism implications under Executive Order 13132. This rule makes changes that are required by Pub. L. 107–171, and became effective on May 13, 2002. The Department does not have discretion in how State agencies implement this provision. The provision, as set forth in this final rule, is reproduced verbatim from the legislation.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related notice (48 FR 29115), this program is included from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Public Law 104–4

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts this rule might have on minorities, women, and persons with disabilities. FNS has no discretion in implementing this change in income eligibility assessment. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the WIC Program from engaging in actions that discriminate based on race, color, national origin, sex, age or handicap. Regulations at 7 CFR 246.8 specifically state that ''Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a and 15b), and FNS instructions ensure that no person shall on the grounds of race, color, national origin, age, sex, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program.'' Discrimination in any aspect of program administration is prohibited by these regulations, Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a, and 15b), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 246.8.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This final rule implements a non-discretionary legislative provision in the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, by providing WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base, when determining income eligibility for the WIC Program. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and opportunity for public comments is unnecessary and contrary to the public interest.

The provisions became effective May 13, 2002. Therefore, we are making this rule effective retroactively to May 13, 2002.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.7, revise paragraph (d)(2)(iv)(A)(*1*) to read as follows:

§ 246.7 Certification of participants.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) * * *

(*1*) Basic allowance for housing received by military services personnel residing off military installations or in privatized housing, whether on- or off-base; and

* * * * *

Dated: October 21, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–27667 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR 718

RIN 0560–AG80

Equitable Relief From Ineligibility

AGENCIES: Farm Service Agency, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to relief to participants in certain cases for certain Farm Service Agency and Commodity Credit Corporation programs. The relief applies to cases where the applicant for

relief took action to the applicant's detriment based on bad information from departmental officials. Also, it covers where the applicant simply, but in good faith, failed to fully comply with program requirements. The rule also addresses changes in the so-called ''90-day finality rule'' that applies to some of the same programs. The rule is intended to implement a statutory requirement that the Agencies provide relief to producers who took action to their detriment based on bad information from officials.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave, SW., Washington, DC 20250–0517. Phone: (202) 720–3463. E-mail: *Dan_McGlynn@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act requires that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act, and continued pursuit of providing all services electronically when practicable. This rule involves no request for a program eligibility determination, payment of benefits, agreements, or contracts that readily lend themselves to electronic access, submission, receipt, or approval. Thus, the Government Paperwork Elimination Act does not apply.

Background

Section 1613 of the Farm Security and Rural Investment Act of 2002 (2002 Act) addresses relief where bad departmental advice or information is given or where a participating producer of an ''agricultural commodity'' fails to comply fully with program requirements but otherwise acts in good faith. Section 1613 provides that, under that section, ''agricultural commodity'' means any agricultural commodity, food, feed, fiber, or livestock that is subject to a ''covered program.'' A ''covered program'' is defined as (1) a program administered by the Secretary of Agriculture (Secretary) under which price or income support, or production or market loss assistance, is provided to producers of ''agricultural commodities;'' and (2) a conservation program administered by the Secretary. But, the section specifies, ''covered programs'' do not include (1) an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); or (2) the crop insurance program carried out under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Using those definitions, the law provides that the Secretary may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program, and therefore ineligible for a loan, payment, or other benefit under the covered program, but only if the participant (1) acting in good faith, relied on the action or advice of the Secretary, or an authorized representative, to the detriment of the participant; or (2) failed to comply fully with the requirements of the covered program, but made a good faith effort to do so. In these cases, the statute specifies, the Secretary may authorize a participant in a covered program to (1) retain loans, payments, or other benefits received under the covered program; (2) continue to receive loans, payments, and other benefits under the covered program; (3) continue to participate, in whole or in part, under any contract executed under the covered program; (4) in a conservation program, re-enroll all or part of the land covered by the program; and (5) receive such other equitable relief as they determine appropriate. Section 1613 also specifies that the Secretary may condition the approval of relief under this section on the participant agreeing to remedy their failure to meet the program requirement.

Also, the law provides for special autonomy for State Directors of the Department's Farm Service Agency and State Conservationists of the Department's Natural Resources and Conservation Service in granting equitable relief. In general, section 1613 provides that the StateDirector and the State Conservationist, in the case of programs administered by their respective offices, may grant relief to a participant(subject to certain limitations) if (1) the amount of loans, payments, and benefits for which relief will be provided to the participant under this special authority is less than $20,000; (2) the total amount of loans, payments, and benefits for which relief has been previously provided to the participant under this special authority is not more than $5,000; and (3) the total amount of loans, payments, and benefits for which relief is provided to similarly situated participants is not more than $1,000,000, as determined by the Secretary. This rule addresses only programs administered through FSA and, hence, through State Directors.

Further, the new law provides that such State Director grants of relief (1) shall not require prior approval by the Administrator of the Department of Agriculture's Farm Service Agency, or any other officer or employee of the Agency or Service; (2) shall be made only after consultation with, and the approval of, the Office of General Counsel of the Department of Agriculture; and (3) are subject to reversal only by the Secretary (who may not delegate the reversal authority). Furthermore, the statute specifies that this special State Director authority does not apply to the administration of (1) payment limitations under (i) sections 1001 through 1001F of the Food Security Act of 1985 (7 U.S.C. 1308 *et seq.*), or (ii) a conservation program administered by the Secretary; or to (2) highly erodible land and wetland conservation requirements under subtitle B or C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*). The State Director authority, the new law specifies, is in addition to any other applicable authority and does not limit other authority provided by law or the Secretary. Under the terms of the new law, a discretionary decision by the Secretary, the State Director, or the State Conservationist under the Section 1613 authority to grant relief in cases of bad information or good faith failures to fully comply with program rules shall be final, and shall not be subject to review under chapter 7 of title 5, United States Code, which provides generally for the relief of agency decisions.

Additionally, the statute requires that, not later than February 1 of each year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes for the previous calendar year (1) the number of requests to the program agencies for ''mis-information'' and ''failure to fully comply'' relief (utilizing the Section 1613 authority) and (2) the number of requests for equitable relief under section 278(d) of the Department of Agriculture Reorganization Act of 1994(7 U.S.C. 6998(d)). Also, information must be submitted regarding the disposition of the requests. The reference to 7 U.S.C. 6998 (d) involves the authority of the Director of the Department's National Appeals Division to grant equitable relief under the same standards as those that apply to FSA.

Section 1613 further states that the authority provided in this section is in addition to any other authority provided in that or any other Act. Also, section 1613 amends section 281(a) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 7001(a)) with respect to the ''90-day finality rule'' which exempted two determinations from its coverage. One is decisions involving the administration of the Consolidated Farm and Rural Development Act, and the second, are determinations arising out of conservation programs administered by the Natural Resources Conservation Service. Those exemptions are reflected in new language in this rule.

Section 1613 also repeals provisions for equitable relief which were contained in 7 U.S.C. 1339a and in 16 U.S.C. 3830. Changes to reflect those repeals will be made as needed in other rules. This rule is limited to 7 CFR part 718 which governs these issues generally for programs administered by the Farm Service Agency of the Department.

With the exception of the changes in the coverage of the finality rule noted above, this rule implements the section 1613 provisions on equitable relief in cases involving incorrect information or action by FSA and failure to comply provisions as they apply to FSA programs and to those programs of the Commodity Credit Corporation that are administered through the FSA. Other agencies within the Department, if any, to which these provisions apply may issue separate rules in this regard. With respect to the special State Director relief provisions, such relief is still under the control of the Secretary and subject to uniform rules under this part. The rules are broad in that regard and do not invade the provisions contemplated by the statute as they have been determined to be in this rule.

Under this rule, the statute is read as applying prospectively only. Relief will be allowed only for actions taken by producers to their detriment after enactment of the 2002 Act (May 13, 2002). (This includes any relief granted under the special State Director provisions). Nothing in the statute provides for retroactive application of the new rules and it was not understood that such a result was intended. A different result, opening old disputes, would be chaotic. Presumably, Congress would have specified that such retroactively was intended if it meant to have the statute read that way. In any event, even if retroactively were allowed, it would be rejected because of the unfairness and chaos it would create. Such a rejection would be authorized under the provisions of the statute which make the granting of any relief under section 1613 discretionary. This allows for one uniform set of rules for all types of relief for actions in the same time period. Again, this also applies to the State Directors. They have the authority to grant relief within the confines of the statute, and are not authorized to decide general policy for the granting of relief on such matters as the timing of the actions for which relief

may be granted. Obviously it would be improper to have those officials have differing interpretations of which decisions fall within the general scope of the powers granted them by the statute and, in any event, the general exercise of those powers are still subject to the supervision of the Secretary under whose authority these rules are written.

The statute as indicated does set certain dollar limits on the officials granted the special relief authority. However, the dollar limits are not tied, in the words of the statute itself, to a particular time period or official. Believing that tying of dollar amounts to nonetheless be the intent, given the normal yearly orientation of farm programs (as is reflected in the reporting requirements of the statute), such a tie has been made in the rule. The limits are made yearly limits. Special rules are set out for how the computation will be made.

Obviously, the amounts involved would be prohibitively small among the many States. And, the cross-State accounting that would otherwise be required would be difficult. Neither that difficulty, nor the odd race to grant relief that it might produce, appear to be intended. Rather, it appears that this provision was meant to provide a substantive change which would otherwise, within reasonable limits, short circuit the normal review process that might otherwise be required before the producer could enjoy the benefit of relief. Even if the statute were to be read as being not limited to a particular year or a particular official the additional authority that would be created by the rule would be within the general discretion granted the Secretary. However, since there will still be dollar limits, the rule does require that, in addition to the approval by the Office of the General Counsel of the Department, State Directors who use this special power must declare in writing their intent to use that authority. They must also report the use of the authority so that an accounting can be made. Rules issued in this notice cover those matters as well.

List of Subjects in 7 CFR Part 718

Agriculture, Disaster assistance, Government employees, Price support programs, Rural areas.

Accordingly, 7 CFR part 718 is amended as set forth below:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority for part 718 is revised to read as follows:

Authority: 7 U.S.C. 1311 *et seq.;* 7 U.S.C. 1501 *et seq;* 7 U.S.C. 1921 *et seq.;* 7 U.S.C. 7201 *et seq.;* 7 U.S.C. 7996; 15 U.S.C. 714b; Pub. L. 107–171.

2. Subpart D is added to read as follows:

Subpart D—Equitable Relief From Ineligibility

Sec.

718.301 Applicability.
718.302 Definitions and abbreviations.
718.303 Reliance on incorrect actions or information.
718.304 Failure to fully comply.
718.305 Forms of relief.
718.306 Finality.
718.307 Special relief approval authority for State Executive Directors.

§ 718.301 Applicability.

(a) This subpart is applicable to programs administered by the Farm Service Agency under chapters VII and XIV of this title, except for an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). Administration of this subpart shall be under the supervision of the Deputy Administrator, except that such authority shall not limit the exercise of authority allowed State Executive Directors of the Farm Service agency as provided for in § 718.307.

(b) Sections 718.303, 718.304, and 718.307 do not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, may be applied.

(c) Section 718.306 does not apply to a function performed under either section 376 of the Consolidated Farm and Rural Development Act (7U.S.C. 1921 *et seq.*), or a conservation program administered by the Natural Resources Conservation Service of the United States Department of Agriculture.

§ 718.302 Definitions and abbreviations.

In addition to the definitions provided in § 718.2 of this part, the following terms apply to this subpart:

Agricultural commodity means any agricultural commodity, food, feed, fiber, or livestock that is subject to a covered program.

Covered program means a program specified in § 718.301 of this subpart.

FSA means the Farm Service Agency of the United States Department of Agriculture.

OGC means the Office of the General Counsel of the United States Department of Agriculture.

SED means, for activities within a particular state, the State Executive Director of the United States Department of Agriculture, FSA, for that state.

§ 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, action or inaction by a participant in a covered program that is to the detriment of the participant, and that is based upon good faith reliance on the action or advice of an authorized representative of a County or State FSA Committee, may be approved by the Administrator, FSA or the Executive Vice President, CCC, as applicable, or their designee, as meeting the requirements of the program, and benefits may be extended or payments made in accordance with § 718.305.

(b) This section applies only to a participant who relied upon the action of, or information provided by, a county or State FSA committee or an authorized representative of such committee and the participant acted, or failed to act, as a result of the Agency action or information. This part does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

§ 718.304 Failure to fully comply.

(a) Under a covered program, when the failure of a participant to fully comply with the terms and conditions of a program authorized by this chapter precludes the providing of payments or benefits, relief may be authorized in accordance with § 718.305 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the FSA approval official to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

§ 718.305 Forms of relief.

(a) The Administrator of FSA, Executive Vice President of CCC, or their designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this subpart, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.

§ 718.306 Finality.

(a) A determination by a State or county FSA committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

§ 718.307 Special relief approval authority for State Executive Directors.

(a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§ 718.303 and 718.304 as if the SED were the final arbiter within the agency of such matters so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the person (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than $20,000 (including in that calculation, any loan amount or other benefit of any kind payable for that year and any other year);

(3) The total amount of such relief which has been previously provided to the participant using this special authority for errors in that year, as calculated above, is not more than $5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by the SED (or the SED's predecessor) for errors for any year under the authority provided in this section, as calculated above, is not more than $1,000,000.

(b) *Report of the exercise of the power.* A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

(c) *Additional limits on the authority.* The authority provided under this section does not extend to:

(1) The administration of payment limitations under part 1400 of this chapter (§§ 1001 to 1001F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that the program participant has, in good faith, detrimentally relied on the guidance or actions of an authorized FSA representative in accordance with the provisions of this subpart, or that the producer otherwise failed, in good faith, to fully comply with the requirements of the program and that the granting of the relief is within the lawful authority of the SED.

(e) *Relation to other authorities.* The authority provided under this section is in addition to any other applicable authority that may allow relief. Generally, the SED may, without consultation other than with OGC, decide all matters under $20,000 but those decisions shall not be subject to modification within the Farm Service Agency to the extent provided for under the rules of this section.

Signed in Washington, DC, on October 28, 2002.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–27683 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1944

RIN 0575–AC25

Farm Labor Housing Technical Assistance

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its regulations for the Farm Labor Housing (FLH) program. The Housing Act of 1949 authorizes the RHS to provide financial assistance to private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. The nonprofit agencies that receive this financial assistance, in turn, provide ''technical assistance'' to other organizations to assist them in obtaining loans and grants for the construction of farm labor housing. The intended effect of this action is to amend the regulations to establish the eligibility requirements that nonprofit agencies must meet to receive technical assistance grants and how the financial assistance will be made available by the RHS.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas MacDowell, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575–0181, in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements from those approved by OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

Farmworkers are among the lowest paid workers in the United States and often lack decent, safe, sanitary, and affordable housing. RHS's FLH program provides loans and grants for farmworker housing and related facilities.

The FLH program is authorized by title V of the Housing Act of 1949 under section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Section 516 also authorizes the RHS to provide financial assistance (not more than 10 percent of the section 516 funds) to encourage the development of domestic and migrant farm labor housing projects.

RHS's FLH program provides funding for both ''on-farm'' and ''off-farm'' housing. The housing may also be for either seasonal or year-round occupancy. Off-farm housing, typically apartment complexes, is open to farmworkers who work at any farming operation. On-farm housing provides housing for the workers of only one farm and is typically designed as single family dwellings. Occupancy of both types of housing is restricted to United States citizens or permanent resident aliens.

Off-farm migrant housing serves farmworkers who perform agricultural work at one or more locations away from their home base throughout the year for periods ranging from a few weeks to several months. Rental assistance is available to many tenants of off-farm housing to make rents affordable. Off-farm housing is financed with section 514 loans and section 516 grants to nonprofit organizations and public agencies such as local housing authorities, and with section 514 loans to limited partnerships in which the general partner is a nonprofit entity.

On-farm housing loans are made to farmers or farm entities to provide housing for farmworker families employed by the farm. On-farm housing is financed with section 514 loans and is not eligible for 516 grants. The tenants (farmworkers) who live in on-farm housing are not eligible for rental assistance.

RHS also provides financial assistance to private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. The services that are provided by these non-profit agencies pursuant to section 516(i) are commonly referred to as ''technical assistance.''

Prior to Fiscal Year (FY) 2000, RHS awarded technical assistance ''contracts.'' These contracts were awarded for one year periods with four option periods that could be exercised at the discretion of the Government. In FY 2000, RHS changed the way that FLH technical assistance funds were awarded. During FY 2000, RHS awarded technical assistance ''grants'' rather than ''contracts.''

On June 21, 2000, a Request for Proposals (RFP) was published in the **Federal Register** requesting ''grant'' proposals from private and public nonprofit agencies. The RFP outlined the application requirements and the criteria that would be used to select proposals for funding. The RFP also

established three FLH technical assistance grant regions (the Eastern, Central, and Western grant regions) and contained the terms of the grants.

On September 27, 2000, three technical assistance grants were awarded. Two of the grants were awarded for the Western grant region and the other was awarded for the Central grant region. No grant proposals were received for the Eastern grant region. Each of the grants has a three year grant period.

When the RFP was published, comments and suggestions were received from interested parties. Some suggested that more than one FY's funding should be made available during the three year grant period. Another issue was that the Central grant region received less funding than the Eastern and Western grant regions. Lastly, one commentor expressed that it was unfair to consider an applicant's experience if such experience was gained outside of the grant region or to give equal weight to an applicant's experience in developing non-farmworker multifamily housing to an applicant's experience in developing farmworker housing.

In the future, RHS intends to periodically publish RFPs that are similar to the one that was published on June 21, 2000. When published, RHS will have the opportunity to make changes to the way funds are distributed, to the minimum performance requirements that must be met, or to other terms of the grants. RHS will at that time consider the suggestions that have been made. However, this revision to the regulation only implements the statutory authority for awarding grants. It does not establish the application requirements, the selection criteria, the performance standards that must be met, or how funds will be distributed when grants are awarded.

On June 1, 2001, the Agency published a proposed rule in the **Federal Register** (66 FR 29739) to establish the eligibility requirements that nonprofit agencies must meet to receive technical assistance grants and to establish how the financial assistance will be made available by RHS. By this final rule, the Agency is also adding a definition of the term ''Technical assistance'' for clarity.

Discussion of Comments

Two commentors responded during the comment period. The Agency wishes to thank the respondents for their comments and suggestions. The comments we received are summarized and discussed below.

Eligibility Is Limited to Private or Public Nonprofit Agencies

One commentor suggested that ''for profit'' organizations should be eligible to receive technical assistance grants. However, the statutory authority for awarding technical assistance grants (section 516(i) of the Housing Act of 1949–42 U.S.C.1486(i)) only authorizes assistance to be provided to private or public nonprofit agencies.

Paperwork Requirements and the Application Process

One commentor suggested that RHS had greatly increased the paperwork requirements and the application process. This rule, however, does not set forth the application requirements. As stated in the proposed rule, ''Requests for Proposals (RFP) may be periodically published in the Federal Register'' and ''RFPs will contain the amount of funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee.''

List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended to read as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

2. Section 1944.151 is revised to read as follows:

§ 1944.151 Purpose.

This subpart contains the policies and procedures and delegates authority for making initial and subsequent insured loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor. This subpart also contains the policies and procedures for making grants under section 516 to encourage the development of farm labor housing. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Housing Service (RHS) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

3. Section 1944.153 is amended by adding, in alphabetical order, a definition for ''technical assistance'' to read as follows:

§ 1944.153 Definitions.

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Technical assistance. The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to:

(1) Performing outreach efforts to inform and recruit potential LH applicants.

(2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.

(3) Preparing market analyses, feasibility analyses, and financial proformas.

(4) Packaging LH loan and grant applications, as well as applications from other funding sources.

(5) Estimating construction costs and providing oversight during construction periods.

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4. Section 1944.157 is amended by redesignating paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

§ 1944.157 Eligibility requirements.

* * * * *

(c) *Eligibility of applicant for an LH technical assistance grant.* To be eligible for an LH technical assistance grant, the applicant must:

(1) Be a private or public nonprofit agency;

(2) Have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for LH under the section 514 and 516 programs; and,

(3) Possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met.

Nonprofit agencies acting on behalf of the grantee must also meet the above stated eligibility requirements.

* * * * *

5. Section 1944.158 is amended by adding a new paragraph (o) to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(o) Encourage the development of farm labor housing. RHS may award ''technical assistance'' grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. Technical assistance services may not be funded under both this paragraph and paragraph (i) of this section. In addition, technical assistance may not be funded by RHS when an identity of interest exists between the technical assistance provider and the loan or grant applicant. Requests for Proposals (RFP) may be periodically published in the **Federal Register** by RHS inviting eligible nonprofit organizations to submit LH technical assistance grant proposals. RFPs will contain the amount of available funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee.

Dated: October 24, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–27681 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–XV–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[NUREG–1600]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a revision to its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to include an interim enforcement policy regarding enforcement discretion for certain fitness-for-duty issues.

DATES: This revision is effective on December 30, 2002, while comments are being received. Submit comments on or before December 2, 2002.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Garmon West, Jr., Office of Nuclear Security and Incident Response, Senior Program Manager, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–1044, (*fitnessforduty@nrc.gov*) or Renee Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2742, e-mail (*RMP@nrc.gov*).

SUPPLEMENTARY INFORMATION: A proposed amendment to the NRC's fitness-for-duty (FFD) regulations (10 CFR Part 26) was published on May 9, 1996 (61 FR 21105). When the NRC sought clearance from the Office of Management and Budget (OMB) to publish a final rule, stakeholders expressed a number of concerns about the rule and its implementation. Given the significance of stakeholder concerns, the NRC concluded on October 3, 2001, that it should: (1) Withdraw the OMB clearance request; (2) request additional public comment on all of the rule's provisions; and (3) conduct stakeholder meetings concerning a combined access authorization and FFD guidance document. As a result of public meetings with stakeholders, the NRC learned of licensee practices in two FFD areas, ''suitable inquiry'' and ''pre-access testing,'' that did not meet the current Part 26 requirements.

Current FFD Requirements

Among its other provisions, the FFD rule provides drug- and alcohol-related requirements for authorizing individuals for unescorted access to nuclear power plant protected areas or for performing activities related to Strategic Special Nuclear Materials. Under the FFD rule, to grant authorization to an individual who has not been employed in the nuclear industry before, licensees must:

(1) Conduct a ''suitable inquiry'' into the individual's employment history for the past five years to identify if the individual had any substance abuse problems;

(2) Ask the individual to provide a ''self-disclosure'' of any substance abuse problems;

(3) Perform a ''pre-access'' drug and alcohol test and verify that the results are negative; and

(4) Provide training to the individual regarding the effects of drugs and alcohol on job performance and the requirements of the licensee's FFD program.

To maintain authorization, individuals must:

(1) Be subject to ''behavioral observation'' by supervisors who are trained to detect signs of possible impairment and changes in behavior;

(2) Report any drug- or alcohol-related arrests; and

(3) Be subject to random and ''for-cause'' drug and alcohol testing with negative test results.

Other requirements for authorizing individuals for unescorted access to nuclear power plant protected areas are defined in 10 CFR 73.56, ''Personnel Access Authorization Requirements for Nuclear Power Plant Personnel.'' NRC Regulatory Guide (RG) 5.66 (1991), ''Access Authorization Program for Nuclear Power Plants,'' provides guidance for implementing § 73.56. One requirement in § 73.56 is that licensees must conduct a background investigation with former employers to determine whether an individual is trustworthy and reliable. Licensees typically ask employers the FFD suitable inquiry questions at the same time.

Although the FFD regulations (10 CFR part 26) and the access authorization regulations (§ 73.56) are intended to assure that nuclear personnel are trustworthy and reliable, there are some differences between them. One important difference is that the access authorization regulations and RG 5.66 address licensees authorizing unescorted access for individuals who are transferring between licensee sites and have interruptions in their authorization. The FFD regulations are less clear on the subject of transfers and short breaks in authorization. For example, the only provision in the current FFD regulations that indirectly addresses these situations allows licensees to rely on a pre-access drug and alcohol test that was performed by another licensee within the past 60 days. Therefore, if the individual had a negative result from another licensee's drug and alcohol test within the past 60

days, the individual does not have to be tested again before authorization is reinstated at the new licensee's site. Guidance contained in NUREG–1385, ''Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions,'' states that licensees may ''accept'' an authorization granted by a previous licensee for individuals who transfer between licensees with a ''short break'' in authorization, but the period of time considered to be a ''short break'' is not defined. As a result, the current FFD regulations have the potential to be interpreted as requiring licensees to treat each individual under consideration for authorization as a new hire, because of the absence of the clear requirements for transfers and reinstatements similar to those found in the access authorization regulations.

Changing Industry Conditions

At the time the FFD regulations were developed (June 7, 1989; 54 FR 24468), the industry structure was different and personnel transfers (*i.e.*, leaving the employment of one licensee to work for another licensee) between licensees with interruptions in authorization were less common. Most licensees operated plants at a single site and maintained a FFD program that applied only to that site. When an individual left employment at one site and began working for another licensee, the individual would be subject to a different FFD program that often had different requirements. Further, because some licensees were reluctant to share information about previous employees with the new employer, licensees often did not have access to the information the previous licensee had gathered about the individual. With relatively few licensee employees changing jobs, the approach in the current FFD regulations caused some delays in granting authorization, but assured that a licensee had complete information upon which to base an authorization decision. The current FFD requirements are particularly burdensome to contractor/vendor (C/V) personnel who more frequently transfer between sites, but, because C/V personnel as a group consistently tested positive for drugs and alcohol at a higher rate than permanent licensee employees (see NRC Information Notice 2001–02), the NRC believed the regulation's requirements were warranted.

Since 1989, the industry has undergone significant consolidation and developed new business practices to use its workforce more efficiently. The FFD regulations that treat all individuals who are transferring between licensees as new hires, and the lack of detailed requirements in the FFD regulations for managing transfers between sites when authorization is interrupted for short periods, have created a number of unnecessary burdens on licensees.

For example, a single nuclear utility may now operate many sites and maintain one corporate FFD program that applies to multiple sites. Thus, an employee at one site operated by the corporation may be transferred to another site operated by the same corporation, and still be subject to the same FFD program. However, the individual is technically transferring to a new licensee and so, under the current regulations, is required again to meet the FFD requirements for authorization at the new site. Although the individual's work history is well documented in the FFD program, if that individual takes an extended vacation, for example, or spends 60 days at corporate headquarters between onsite assignments, the current FFD regulations require that the individual be treated as a new hire. The individual's ability to start work at the new site may be unnecessarily delayed until the suitable inquiry and pre-access drug and alcohol testing requirements of the current FFD regulations are met.

In addition, industry efforts to better use expertise and staffing resources have resulted in the development of a large transient workforce within the nuclear industry that travels from site to site as needed, such as roving outage crews. Although the industry has always relied upon C/Vs for special expertise and to staff for outages, the number of transient personnel who work solely in the nuclear industry has significantly increased and the length of time they are onsite has decreased. Although the employment histories of these individuals are well known within the industry, these individuals also must be treated as new hires under the current FFD regulations.

Because the current FFD regulations were written on the basis that individual licensees would maintain independent, site-specific FFD programs and would share limited information, and that the majority of nuclear personnel would remain at one site for years, the regulations do not adequately address the transfer of personnel between sites with short interruptions in authorization between assignments. As a result, licensees applied the principles of their access authorization programs (under § 73.56 and RG 5.66) to the FFD programs, and developed three practices that do not meet the intent of the current FFD rule's requirements, but are consistent with the NRC's intent that licensees assure that personnel who are authorized to perform activities within the scope of Part 26 are trustworthy and reliable.

Suitable Inquiry Practices

With regard to conducting a suitable inquiry before authorizing unescorted access, many licensees have adopted two practices that are consistent with access authorization requirements for background investigations, but are inconsistent with the FFD requirements regarding suitable inquiries. First, many licensees were not contacting employers when an individual had worked for an employer for less than 30 days. Instead, licensees followed the practice for background investigations set forth in RG 5.66. Licensees only contacted employers for whom the individual had worked for 30 days or more. Second, in many cases, if an individual left one licensee's site and worked at a job that did not require access authorization for two weeks, and then was assigned to another licensee within 30 days of leaving the previous licensee, the receiving licensee would not contact the interim employer for the suitable inquiry. However, if the individual had an interruption in authorization of more than 30 days, the licensee would contact interim employers for suitable inquiry purposes. As is allowed under access authorization guidance, licensees focused the suitable inquiry on the period of interruption, and relied on the information collected by previous licensee(s) to meet the five-year suitable inquiry requirement. Although the requirements for a suitable inquiry under the FFD regulations and those for a background investigation under the access authorization regulations differ, licensees believed that it was reasonable to use the same practices for these regulations.

As a result of initial meetings with stakeholders, the NRC developed an approach, in SECY–01–0134, to address inconsistent implementation with regard to contacting employers for each 30-day period. Specifically, until a final rule that would address this issue became effective, the following approach would be taken under an interim enforcement policy: The NRC normally would not take enforcement action for a licensee's failure to contact all employers when an individual was employed for less than 30 days, provided that the licensee verified at least one period of employment status during that 30-day period. For example, during the month of April, if a transient worker was employed by Employer A for two weeks, Employer B for one week, and unemployed for one week, under this interim policy, it would only

be necessary to verify the individual's status for one of these periods. Because this practice required at least one contact for each 30-day period, the NRC believed, at the time the policy was proposed, that this approach provided adequate safety in a cost-effective manner.

Pre-Access Testing

With regard to pre-access testing, many licensees were not conducting a pre-access test for alcohol and drugs in those cases where an individual was subject to a licensee's FFD program within the past 30 days. However, the fact that an individual was recently subject to a FFD program does not necessarily mean the individual was recently tested for drugs and alcohol. Thus, this practice conflicts with 10 CFR 26.24(a)(1) and the applicable provisions of the NRC's guidance in NUREG–1385. The current regulations require, and the guidance provides, that an applicant be tested for drugs and alcohol ''within 60 days prior to the initial granting of unescorted access.'' They do not provide an exception for a reinstatement or transfer where there is little or no interruption in authorization.

Licensees were not conducting the pre-access test in these cases because they viewed the initial FFD pre-access screening as being the same as initial screening for access authorization under 10 CFR 73.56. Initial screening for access authorization is completed once and, as long as the individual remains subject to behavioral observation and arrest-reporting requirements, the initial screening is not repeated.

The NRC believes that it is reasonable that short interruptions in authorization be treated similarly to continuous coverage under a FFD program. For example, a worker who is subject to a FFD program, but is unavailable for behavioral observation and possible random testing while on vacation for two or three weeks, is generally considered to be under continuous coverage and is not given a pre-access test upon return. Also, the practice of omitting the pre-access test when the interruption in coverage is less than 30 days is similar to NRC's practice in related areas. For example, using the guidance endorsed by RG 5.66 for access authorization programs, licensees generally do not conduct a background investigation for an individual when the interruption in authorization is less than 30 days. In another example, the guidance in NUREG–1385, states that an individual covered by a C/V's FFD program may take a (reasonably short) period of time to transfer from one site to another without invoking the need for a pre-access test.

In SECY–01–0134, the staff proposed the following interim enforcement policy: The NRC normally would not take enforcement action for a licensee's failure to conduct a pre-access test for alcohol and drugs in those cases where an individual has had a short break in FFD coverage, provided certain conditions are met. That is, the individual was subject to a FFD program for at least 30 of the previous 60 days and has not, in the past, tested positive for illegal drugs, been subject to a plan for treating substance abuse, been removed from or made ineligible for activities within the scope of Part 26, been denied unescorted access by any other licensee, or had adverse employment action taken by another employer in accordance with a drug and alcohol policy.

Additional Considerations

The Commission's Staff Requirements Memorandum dated October 3, 2001, directed the staff to request additional public comment on all the proposed rule's provisions and to conduct several stakeholder meetings concerning combined access authorization and FFD guidance. In response to the Commission's direction, the NRC staff has engaged stakeholders in monthly public meetings since November 15, 2001. As a result of these meetings, and as the industry develops new access authorization guidance that is currently under NRC review, the NRC has determined that the enforcement discretion proposed in SECY–01–0134 would not adequately address a number of concerns.

These concerns include:

(1) The proposed approach does not adequately address new information developed subsequent to the events of September 11, 2001;

(2) The proposed approach does not allow a licensee to take credit for the information gathered about an individual during suitable inquiries conducted by previous licensees;

(3) A determination of the number of days in a 60-day period that an individual had been subject to a Part 26 FFD program would create an unnecessary regulatory burden; and

(4) The proposed approach is inconsistent with current and anticipated access authorization guidance and would result in continued discrepancies between access authorization guidance and FFD requirements.

In light of the events of September 11, 2001, and the increased interactions with stakeholders, the NRC now believes that contacting only one employer in each 30-day period in which the individual was employed by more than one employer does not provide a sufficient level of assurance that individuals granted initial authorization are trustworthy and reliable. Short periods of employment could be a warning sign of substance abuse problems. Therefore, in order to increase the likelihood of early detection of any developing substance abuse problems, the NRC has concluded that it is necessary (with one exception noted below) that every employer be contacted to meet the five-year suitable inquiry requirement, as required in the current regulations.

The NRC believes that a suitable inquiry is not necessary for individuals being reinstated or transferred with an interruption in authorization of 30 days or less. Based upon industry experience, the NRC has concluded that there is limited risk from individuals who have established a work history within the nuclear industry, have previously met the access authorization and FFD regulations for granting and maintaining authorization, and have a short break in authorization due to a vacation or a transfer to a different site. Further, these individuals are required to self-disclose any drug- and alcohol-related problems that may have occurred during the period of interruption, and they recognize that a failure to report this information to the licensee may result in permanent revocation of authorization throughout the nuclear power industry. The requirement for a self-disclosure prior to reinstating authorization provides additional assurance that any developing substance abuse problems are detected for the period in which authorization was interrupted.

The NRC has also concluded that it is reasonable for licensees to rely upon the information gathered by previous licensees, and by C/Vs with licensee-approved FFD programs, to meet the suitable inquiry requirement. Because licensees and C/Vs now share the information they have gathered about an individual applicant for authorization, the requirement for each new licensee to independently contact every employer from the past five years is redundant and unnecessary.

The discretion policy proposed in SECY–01–0134 also did not recognize that many licensees and C/Vs now maintain some personnel in a ''ready to be authorized'' status, although the individuals are not currently working at a site or assigned to perform activities within the scope of the FFD rule. These individuals have met the FFD and access authorization regulations for

authorization, and are subject without interruption to the licensee's or C/V's FFD program, including FFD training, behavioral observation, for-cause alcohol and drug testing, and are required to report any drug-or alcohol-related arrests. In some cases, they are also subject to random testing for drugs and alcohol. Licensees maintain that they should be able to ''take credit'' for the elements of the FFD program to which an individual has been subject without interruption when deciding whether to grant authorization for unescorted access to a nuclear power plant protected area.

To illustrate the implications of the current FFD regulations in these cases, consider an individual who has been working at a nuclear utility's corporate headquarters for the past 45 days and has been subject to all of the elements of the licensee's FFD program. This individual is being transferred within the licensee corporation or to a site of a different licensee and will again require unescorted access to the protected area. Because the individual has not been authorized for unescorted access at a site during the past 45 days, the current regulations require the licensee to:

(1) Obtain another self-disclosure (*i.e.*, a self-report of any drug-or alcohol-related arrests), despite the fact that the individual has been continuously obligated to self-report any drug-or alcohol-related arrests under the corporate FFD program;

(2) Conduct a new suitable inquiry of the individual's past five years of employment before granting authorization, despite the fact that a suitable inquiry was conducted when the individual was first granted authorization and the individual has been continuously employed by the same corporation during the 45-day interruption in access authorization at a site; and

(3) Perform a pre-access test for drugs and alcohol if the individual had not been selected for random testing within the past 60 days, despite the fact that the individual was tested as part of the initial authorization process, has been continuously subject to the possibility of being tested, and may have been subject to random testing several times since the first authorization was granted.

These actions represent an unnecessary regulatory burden in such instances.

The NRC further believes that one FFD program element cannot be substituted for another. So, for example, if an individual has been subject to a licensee's or C/V's FFD behavioral observation and arrest-reporting requirements, but was not subject to random testing, then the licensee would be required to conduct a pre-access test for drugs and alcohol. If an individual was not under arrest-reporting and behavioral observation requirements without interruption, but had a drug and alcohol test within the past 60 days, then only the self-disclosure and suitable inquiry would be necessary before granting authorization.

Revised Enforcement Discretion

Based on these considerations, the NRC has revised the enforcement discretion policy proposed in SECY–01–0134 as follows:

Licensees may rely upon the information gathered by previous licensees regarding an individual applicant's past five years of employment to meet the suitable inquiry requirement. Because licensees now share information from the suitable inquiries they have conducted, as well as information about an individual's compliance with the licensee's FFD policy during the period authorization is held at each site, the NRC believes that relying upon the information gathered by previous licensees provides adequate safety.

If an individual's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably (*i.e.*, the individual did not violate the licensee's FFD policy), before granting authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure (*i.e.*, a report of any drug-or alcohol-related arrests) for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption; and

(2) Ensure that the individual has met FFD refresher training requirements.

If an individual's authorization has been interrupted for 31 days to 60 days and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(2) Within 5 working days of granting authorization, complete a suitable inquiry for the period since last authorization was terminated by contacting every interim employer, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(3) Verify that results of an alcohol test are negative and collect a specimen for drug testing, unless either a drug and alcohol test meeting the standards of part 26 was performed within the past 60 days and results were negative, or the individual was subject to a licensee-approved part 26 FFD program that included random drug and alcohol testing throughout the period of interruption; and

(4) Ensure that the individual has met FFD refresher training requirements.

This revised enforcement discretion policy addresses not only short breaks of 30 days or less, but also an interruption of 31 days to 60 days. In SECY–01–0134, the proposed enforcement discretion for reinstatement or transfer indicated that the individual must be subject to a part 26 program for ''at least 30 of the previous 60 days'' to be exempt from a pre-access test. The revised enforcement discretion policy addresses interruptions up to 60 days, provides a graded approach to pre-access testing, and ensures consistency with the requirement that licensees perform ''testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities with the scope'' of part 26. In addition, the revised enforcement discretion policy is consistent with the interruption periods that are being used in the draft FFD rule (*http://ruleforum.llnl.gov*).

This revised enforcement discretion policy has several advantages over the enforcement discretion policy proposed in SECY–01–0134. Specifically, this policy:

(1) Provides greater assurance that individuals granted unescorted access to nuclear power plants are trustworthy and reliable;

(2) Provides greater alignment between the interim enforcement discretion policy and the future FFD rule;

(3) Achieves greater consistency between FFD and access authorization guidance;

(4) Allows licensees to take credit for the suitable inquiries conducted by previous licensees;

(5) Reduces the ambiguity in the current rule regarding the NRC's expectations for managing transfers of personnel between sites;

(6) Minimizes the unnecessary burden of redundant regulatory requirements; and

(7) Takes a graded approach to updating and reinstating authorization for individuals whose authorization has been interrupted for up to 60 days.

Further, the revision recognizes that the potential risks of updating or reinstating an individual who has recently held authorization, or has been subject to the majority of the elements of a part 26 FFD program, are less than those presented by an unknown and unmonitored individual, for whom the *current* regulations allow up to 60 unmonitored days between the pre-access test and the authorization to perform activities within the scope of part 26. The NRC believes these measures will maintain safety and increase the overall efficiency and effectiveness of the licensees' part 26 programs, while reducing unnecessary regulatory burden.

The NRC does not intend to pursue past violations for insufficient suitable inquiries (where licensees failed to contact employers when individuals had worked for employers for less than 30 days) and past violations for failures to perform pre-access drug tests (where individuals were subject to a FFD program within the last 30 days). The NRC believes that this exercise of enforcement discretion is appropriate because:

(1) Individuals who currently have authorization under the past suitable inquiry pre-access testing practices have successfully maintained their authorizations while subject to part 26 FFD programs over time;

(2) Pursuing past violations would not be an effective and efficient use of NRC resources; and

(3) Requiring licensees to conduct new suitable inquiries and pre-access tests would represent undue regulatory burden.

In conclusion, the NRC believes that the practices included in this interim enforcement policy will ensure adequate protection of public health and safety and nuclear security.

Accordingly, the proposed revision to the NRC Enforcement Policy reads as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

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Interim Enforcement Policies

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

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Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR part 26)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR part 26, Fitness-for-Duty Programs that occur after December 30, 2002. The NRC will also exercise enforcement discretion and normally not pursue past violations for insufficient suitable inquiries (where licensees failed to contact employers when individuals had worked for employers for less than 30 days) and past violations for failures to perform pre-access drug tests (where individuals were subject to a FFD program within the last 30 days) that occurred prior to December 30, 2002. The policy, subject to subsequent Commission-approved associated policy, guidance, or regulation, is in effect until a final revision of 10 CFR part 26 is issued and becomes effective.

Suitable Inquiry

The regulation in 10 CFR 26.3 requires that before granting an individual unescorted access, a licensee must conduct a suitable inquiry consisting of a ''best-effort verification of employment history for the past five years, but in no case less than three years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy.''

The requirement does not provide an exception when an individual is reinstated at a licensee facility or transferred within a licensee corporation or to another licensee where there is little or no interruption in authorization. The term, ''authorization,'' refers to a period during which an individual maintained unescorted access or was assigned to perform activities within the scope of part 26. However, enforcement action will not normally be taken for failure to contact interim employers, if the following practice is adopted:

If the individual applicant's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably, before granting authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall obtain and verify that a self-disclosure (i.e., a report of any drug-or alcohol-related arrests) for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption. Potentially disqualifying FFD information means information demonstrating that an individual has, during the period authorization was interrupted:

(1) Violated an employer's drug and alcohol testing policy;

(2) Used, sold, or possessed illegal drugs;

(3) Abused legal drugs;

(4) Subverted or attempted to subvert a drug or alcohol testing program;

(5) Refused to take a drug or alcohol test;

(6) Been subjected to a plan for substance abuse treatment (except for self-referral); or

(7) Had legal or employment action taken for alcohol or drug use.

The licensee shall also ensure that the individual has met FFD refresher training requirements.

The requirements also do not provide an exception for each licensee to conduct a suitable inquiry into an individual applicant's past five years of employment when an individual is reinstated at a licensee facility or transferred to another licensee facility. However, enforcement action will not normally be taken for failure to contact employers from the past five years, if the following practice is adopted:

Licensees may rely upon the information gathered by previous licensees regarding an individual applicant's past five years of employment to meet the suitable inquiry requirement.

The NRC may take enforcement action when a licensee does not follow these practices.

Pre-Access Testing

The regulation in 10 CFR 26.24(a)(1) requires that a person be tested for drugs and alcohol ''within 60 days prior to the

initial granting of unescorted access to protected areas.''

The requirement does not provide an exception when an individual is reinstated at a licensee facility or transferred within a licensee corporation or to another licensee where there is little or no interruption in authorization. However, enforcement action will not normally be taken for failure to conduct a pre-access test for alcohol and drugs, if the following practice is adopted:

If the individual applicant's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the past 30 days reveals no potentially disqualifying information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption; and

(2) Ensure that the individual has met FFD refresher training requirements.

If the individual applicant's authorization has been interrupted for 31 days to 60 days and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(2) Within 5 working days of granting authorization, complete a suitable inquiry for the period since last authorization was terminated, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(3) Verify that results of an alcohol test are negative and collect a specimen for drug testing, unless either a drug and alcohol test meeting the standards of Part 26 was performed within the past 60 days and results were negative or the individual was subject to a licensee-approved part 26 FFD program that included random drug and alcohol testing throughout the period of interruption; and

(4) Ensure that the individual has met FFD refresher training requirements.

The NRC may take enforcement action when a licensee does not follow these practices.

Dated at Rockville, MD, this 24th day of October, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27592 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–214–AD; Amendment 39–12929; AD 2002–22–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This action requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. This action also provides for an optional action of overhaul or replacement of the carriage spindles, which would extend the repetitive inspection interval. This action is necessary to prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 15, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–214–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2186; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating fractures of the carriage spindles of the outboard mid-flaps on certain Boeing Model 737 series airplanes. The fractures resulted from stress-corrosion cracking. The most critical section for a fracture is at the forward end of the spindle; two of the thirteen reported fractures occurred in this area on airplanes that had accumulated between 4,198 and 43,919 total flight cycles. In a recent incident, dual failure of the carriage spindles occurred and one of the spindles failed at a location critical for continued flap functionality. If one carriage spindle fractures on a flap, it will affect control of flight of the airplane. If both the inboard and outboard spindles fracture in the critical section on an outboard

flap, it could result in loss of controllability of the airplane.

Related Rulemaking

This AD is related to AD 90–17–19, amendment 39–6705 (55 FR 33280, August 15, 1990). That AD is applicable to all Boeing Model 747 series airplanes, except Model 747SP, and requires periodic inspections of both inboard and outboard trailing edge flap carriage spindles for cracks and corrosion, and overhaul or replacement, if necessary. That AD also requires periodic inspections to detect cracks or corrosion of all exposed surfaces of the carriage spindles, including inner bore, and aft links; and overhaul or replacement, if necessary. That AD also shortens certain compliance intervals to ensure continued airworthiness.

This AD requires similar actions for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, because the carriage spindles on the outboard mid-flaps are very similar to the carriage spindles on Model 747 series airplanes.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, which describes procedures for repetitive nondestructive test (NDT) inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. The corrective action includes overhaul or replacement of the carriage spindle if any cracks, fractures, or corrosion are found. The service bulletin also recommends that a report be sent to the manufacturer if a crack or fracture of any carriage spindle is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the actions in this AD are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between AD and Service Information

The service bulletin explicitly specifies doing a NDT inspection for cracks or fractures of each carriage spindle, and indicates that operators should look for cracking or corrosion of the exposed portion of the spindle. We infer that this description is that of a general visual inspection; therefore, this AD adds a general visual inspection for cracks, fractures, or corrosion of the spindle. We have added a note to this AD to define such an inspection.

Although the service bulletin recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

Interim Action

This is considered to be interim action. We are currently considering mandating overhaul or replacement of the carriage spindles, which will extend the interval for the repetitive inspections required by this AD action. This action is similar to that required by AD 90–17–19, discussed above. However, the planned compliance time for the overhaul or replacement action is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–214–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–22–05 Boeing: Amendment 39–12929. Docket 2002–NM–214–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Do general visual and nondestructive test (NDT) inspections of each carriage spindle (two on each flap) of the left and right outboard mid-flaps to find cracks, fractures, or corrosion at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. Repeat the inspection at least every 180 days until paragraph (c) of this AD is done.

(1) Before the accumulation of 12,000 total flight cycles or 8 years in-service on new or overhauled carriage spindles, whichever is first.

(2) Within 90 days after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action

(b) If any crack, fracture, or corrosion is found during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable actions for that spindle as specified in paragraph (b)(1) or (b)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. Then repeat the inspections required by paragraph (a) of this AD every 12,000 flight cycles or 8 years, whichever is first; on the overhauled or replaced spindle only.

(1) If any corrosion is found in the carriage spindle, overhaul the spindle.

(2) If any crack or fracture is found in the carriage spindle, replace with a new or overhauled carriage spindle.

Note 3: Although the service bulletin recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

Optional Overhaul or Replacement

(c) Overhaul or replacement, as applicable, of all four carriage spindles, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, extends the repetitive inspection interval specified in paragraph (a) of this AD to every 12,000 flight cycles or 8 years, whichever is first.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 15, 2002.

Issued in Renton, Washington, on October 22, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27315 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 113 and 178

[T.D. 02–62]

RIN 1515–AD11

Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and to encourage the presentation of this information electronically. The document also allows a non-vessel operating common carrier (NVOCC) having an International Carrier Bond to electronically present cargo manifest information to Customs. This information is required in advance and is urgently needed in order to enable Customs to evaluate the risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels for importation into the United States, while, at the same time, enabling Customs to facilitate the prompt release of legitimate cargo following its arrival in the United States. Failure to provide the required information in the time period prescribed may result in the delay of a permit to unlade and/or the assessment of civil monetary penalties or claims for liquidated damages.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT:

For Legal matters: Larry L. Burton, Office of Regulations and Rulings, (202–572–8724).

For National Targeting Center issues: David Tipton, (202–927–0108).

For Container Security Initiatives: Adam Wysocki, (202–927–0724).

For Trade Compliance issues: Kimberly Nott, (202–927–0042).

SUPPLEMENTARY INFORMATION:

Background

The Customs laws impose certain requirements upon vessels that will arrive in the United States to discharge their cargo. In particular, vessels destined for the United States must comply with 19 U.S.C. 1431, which requires that every vessel bound for the United States and required to make entry under 19 U.S.C. 1434 have a manifest that meets the requirements that are prescribed by regulation. To this end, under 19 U.S.C. 1431(d), Customs may by regulation specify the form for, and the information and data that must be contained in, the vessel manifest, as well as the manner of production for, and the delivery or electronic transmittal of, the vessel manifest.

Currently, § 4.7, Customs Regulations (19 CFR 4.7), requires: That the master of every vessel arriving in the United States and required to make entry have on board the vessel a manifest in accordance with 19 U.S.C. 1431 and § 4.7; and that an original and one copy of the manifest must be ready for production upon demand and must be delivered to the first Customs officer who demands the manifest. Sections 4.7(a) and 4.7a, Customs Regulations (19 CFR 4.7(a) and 4.7a), set forth the documentary and informational requirements that constitute the vessel manifest.

Pursuant to § 4.7(a), the cargo declaration (Customs Form 1302 or its electronic equivalent) is one of the documents that comprises a vessel manifest. The cargo declaration must list all the inward foreign cargo on board the vessel regardless of the intended U.S. port of discharge of the cargo (§ 4.7a(c)(1)).

Furthermore, 19 U.S.C. 1448 provides, in pertinent part, that no merchandise may be unladen from a vessel which is required to make entry under section 1434 until Customs has issued a permit for its unlading. In addition, under section 1448, Customs possesses a reasonable measure of regulatory discretion as to whether, and under what circumstances and conditions, to issue a permit to unlade incoming cargo from a vessel arriving in the United States. Section 4.30, Customs Regulations (19 CFR 4.30), lists the requirements and conditions under which Customs may issue a permit to unlade foreign merchandise from a vessel arriving in the United States.

In addition, 19 U.S.C. 1436(a)(1) and (a)(4) provide that it is unlawful to fail to comply with sections 1431, 1433 or 1434 or any regulation prescribed under any of those statutory authorities. Moreover, 19 U.S.C. 1436(a)(2) states that it is unlawful to present or transmit, electronically or otherwise, any forged, altered or false document, paper, data or manifest to the Customs Service under 19 U.S.C. 1431, 1433(d) or 1434. Under section 1436(b), the master of a vessel who commits any such violation is liable for a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

Proposed Rulemaking; Advance Presentation of Vessel Cargo Manifest to Customs; Required Information

By a document published in the **Federal Register** (67 FR 51519) on August 8, 2002, Customs proposed to amend § 4.7 to provide that, pursuant to 19 U.S.C. 1431(d), for any vessel subject to entry under 19 U.S.C. 1434 upon its arrival in the United States, Customs must receive the vessel's cargo manifest (declaration) from the carrier 24 hours before the related cargo is laden aboard the vessel at the foreign port. The proposed rule also enumerated the specific informational elements that would need to be included in the submitted cargo manifest.

Necessity for Advance Presentation of Vessel Cargo Manifest to Customs

As explained in the preamble of the Notice of Proposed Rulemaking (67 FR at 51520), the United States Customs Service recently launched the Container Security Initiative (''CSI''). CSI will secure an indispensable, but vulnerable link in the chain of global trade: Containerized shipping. Approximately 90% of world cargo moves by container; 200 million cargo containers are transported between the world's seaports each year, constituting the most critical component of global trade. Nearly half of all incoming trade to the United States (by value) arrives by ship, and most of that is in sea containers. Annually, nearly 6 million cargo containers are offloaded at U.S. seaports.

There is, however, virtually no security for this critical global trading system. And the consequences of a terrorist incident using a container would be profound. As experts like Dr. Stephen E. Flynn, Senior Fellow, Council on Foreign Relations, have pointed out repeatedly, if terrorists used a sea container to conceal a weapon of mass destruction—a nuclear device, for example—and detonated it on arrival at a port, the impact on global trade and the global economy would be immediate and devastating. All nations would be affected because there would be no mechanism for identifying weapons of mass destruction before they reached our shores and before they posed a threat to the global economy.

AI Qaeda and other terrorist organizations pose an immediate and substantial threat. And the threat is not just to harm and kill American citizens, it is a threat to damage and destroy the U.S. and the world economy.

To address the threat terrorists pose to containerized shipping, Customs developed CSI. Under CSI, U.S. Customs is working with other governments to identify high-risk cargo containers and pre-screen those containers at the foreign ports *before* they are shipped to the U.S. CSI has four core elements:

(1) Identify ''high-risk'' containers. In connection with its domestic targeting efforts, Customs has already established criteria and automated targeting tools for identifying ''high risk'' shipments. Indeed, every one of the shipments that arrives in the United States by sea container is *currently* assessed for risk using these tools and advance manifest data. If this data were provided earlier, Customs could use these same tools to detect high risk shipments before they were carried to the United States. Accordingly, to enhance domestic targeting and to enable overseas targeting and screening of containers, Customs has proposed a rule requiring accurate and detailed information to be transmitted before shipments are laden on vessels destined for the United States.

(2) Pre-screen containers *before* they are shipped. As discussed above, to protect the United States and global trade from the risks posed by international terrorists, security screening should be done at the port of departure rather than the port of arrival.

(3) Use technology to screen high-risk containers. Technology enables screening to be done rapidly without slowing down the movement of trade. This technology includes large-scale x-ray and gamma machines and radiation detection devices.

(4) Use more secure containers to ensure the integrity of containers screened overseas.

CSI thus offers real protection, on a day-to-day basis, for the primary system of international trade—a system on which all economies depend. Given the security afforded by CSI, the investments made by ports and

members of the trade to implement CSI represent relatively inexpensive forms of insurance against the terrorist threat. In the event of an attack using a cargo container, the CSI network of ports will be able to remain operational because those ports will already have an effective security system in place—one that will deter and prevent terrorists from using it. Without such a network, the damage to global trade caused by a terrorist attack involving international shipping would be staggering.

In addition to protecting global trade, CSI should *facilitate* the flow of that trade. When a container has been pre-screened and sealed under CSI, U.S. Customs will not, absent additional information affecting its risk analysis, need to inspect it for security purposes when it reaches the U.S. Moreover, this system could reduce the processing time for certain shipments because the screening at a CSI port will in most cases take place during ''down time.'' Most containers sit on a terminal for an average of several days prior to lading. This window of ''down time'' will be used to screen containers for security purposes. On arrival at the U.S. seaport, the CSI-screened container should be released immediately by U.S. Customs, which could shave hours, if not days, off of the shipping cycle. In this manner, CSI should increase the speed and predictability for the movement of cargo containers shipped to the U.S.

For these reasons, CSI is a critical component of the President's Homeland Security Strategy. It has also been endorsed by the G–8 as well as the World Customs Organization.

As a result of this broad support, CSI has been expanding rapidly. When Customs launched CSI this past January, the first step was to implement CSI as quickly as possible in Canada and the top 20 ports (by volume) that ship to the United States. When fully implemented in these locations, CSI will substantially increase the security of the United States and the global trading system because the top 20 ports alone account for nearly 70% of all the containers shipped to U.S. seaports. To date, Canada, the Netherlands, Belgium, France, Germany, Singapore, Hong Kong, and Japan have agreed to implement CSI. These countries represent 11 of the top 20 ports. Customs anticipates that several other nations will agree to implement CSI in the near term, and that CSI will expand beyond the top 20 ports during the next year.

CSI is already operational in Canada and the Netherlands. It will be implemented at several additional ports within the next 90 days. Given this explosive growth, it is critical that the information necessary to implement CSI fully be provided to Customs in the near term. For this reason, Customs proposed this rulemaking on August 8, 2002 and, following the comment period, is issuing this final rule today.

Non-Vessel Operating Common Carriers (NVOCCs)

Under the proposed rule, the conditions of the International Carrier Bond (19 CFR 113.64) were proposed to be amended to recognize the status of a Non-Vessel Operating Common Carrier (NVOCC) as a manifesting party and to obligate any NVOCC having such a bond and electing to provide cargo manifest information to Customs electronically under § 4.7 and 4.7a to accurately transmit such information to Customs 24 or more hours before the related cargo is laden aboard the vessel at the foreign port. Breach of these obligations would result in liquidated damages against the NVOCC. For purposes of the proposed rule, a non-vessel operating common carrier (NVOCC) as a common carrier that does not operate the vessels by which the ocean transportation is provided, would be considered a shipper in its relationship with an ocean common carrier.

Penalties or Liquidated Damages for False or Untimely Filing of Manifest Data

If the master of a vessel failed to present or transmit accurate manifest data in the required time period or presented or transmitted any false, forged or altered document, paper, manifest or data to Customs, the proposed regulations specified that monetary penalties could be assessed under the provisions of 19 U.S.C. 1436(b). Likewise, if an NVOCC having an International Carrier Bond elected to transmit such data electronically to Customs and failed to do so in the required time period or transmitted any false, forged or altered document, paper, manifest or data to Customs, the NVOCC could be liable for the payment of liquidated damages for breach of the conditions of the International Carrier Bond, in addition to any other applicable penalties.

Issuance of Permit To Unlade Cargo

The proposed rule also provided that if the carrier did not present cargo declaration information to Customs prior to the lading of the cargo aboard the vessel at the foreign port, Customs could, in addition to assessment of civil monetary penalties, delay issuance of a permit to unlade the entire vessel or a portion thereof until all required information was received.

Preliminary Entry

Finally, it was proposed that § 4.8 be amended to make clear that the granting of preliminary entry by Customs would be conditioned upon the electronic submission of the Cargo Declaration (Customs Form (CF) 1302), as well as the provision to Customs either electronically or in paper form of all other forms required by § 4.7.

Discussion of Comments

A total of 78 commenters responded to the notice of proposed rulemaking. Nearly all of the commenters recognized the need to act immediately to protect the global trading systems, and in particular to protect the most important element in the movement of international trade—containerized cargo. They also recognized the urgency and seriousness of the threat posed by terrorist organizations and the smuggling of weapons of mass destruction, including radiological and nuclear materials. They complimented the Customs Service on newly created programs such as the Customs-Trade Partnership Against Terrorism (C–TPAT) and the Container Security Initiative (CSI), which are designed to address this threat.

Most commenters questioned how the regulation would be implemented. They raised operational issues regarding the movement of containers, the security of containers and the interfaces between the U.S. Customs Service and the trade. They also noted that the regulation would require changes to existing business practices that could take several months to fully implement.

While the aim of this regulation is to better secure containerized cargo from the threat of terrorism, it is important to note that carriers, shippers, importers and others should realize significant benefits from its implementation. Most notably, once a cargo container is pre-screened in a foreign port, in the absence of additional information affecting Customs risk analysis, Customs will rarely need to again screen the container or inspect its contents for security purposes upon arrival in the United States. This offers greater predictability for freight forwarders and importers to arrange for transportation upon discharge of the cargo. This and other benefits, however, will only be fully realized after the Customs Service is able to pre-screen containers overseas, using the accurate and complete information required by this regulation.

We have carefully considered all of the comments, and as a result, we have

modified the proposed regulation in many respects. For example, many commenters questioned the need to include bulk shipments under the proposed regulation. After considering these comments, we have modified the proposed regulation to exempt bulk shipments from its requirements. Others requested greater assurances of confidentiality. In response, we will be taking steps appropriately to protect business sensitive information.

In addition, we have considered the comments about the need for additional time to implement the reporting requirements because of potential changes in business practices. Balancing these comments against the pressing need to protect the national security of the United States and to protect the safe and secure movement of international trade, we have decided to not initiate any enforcement actions such as assessing penalties for non-fraudulent violations of this regulation for 60 days after the regulation goes into effect. There is an overriding national security need, however, to move as quickly as possible to protect the United States and the global trading system from terrorism, especially the profound threat of nuclear terrorism.

Though enforcement actions for non-fraudulent violations of this regulation will not be initiated for 60 days after the regulation goes into effect, the U.S. Customs Service is prepared to receive automated manifest information immediately, which would allow Customs to offer facilitation benefits to those customers of carriers and NVOCCs that utilize CSI ports.

We have made a good faith effort to make changes to the rule where appropriate at this time, but we recognize that not all of the modifications suggested by commenters relate to changes in the regulation itself, and that not all potential implementation issues could be foreseen. In the interest of maintaining an open dialogue with affected parties, and consistent with the long-standing Customs practice of working with the trade, Treasury is inviting the Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC) to convene a special subcommittee to advise the U.S. Customs Service on operational issues arising out of the implementation of this regulation.

A complete description of the various issues raised by the commenters, together with Customs response to these issues, is set forth below.

19 U.S.C. 1431 as Authority for Regulations Notwithstanding Trade Act of 2002

Comment: Twenty-one commenters questioned the validity of the proposed advance cargo manifest regulations under 19 U.S.C. 1431 in light of section 343(a) of the Trade Act of 2002 (Public Law 107–210; 116. Stat. 933), that was enacted on August 6, 2002. Section 343(a) concerns the mandatory filing with Customs of advanced electronic information for cargo being imported into or exported from the United States by vessel, vehicle or aircraft. These commenters contend that the proposed advance cargo manifest regulations are in direct contradiction with the requirements imposed under section 343(a)(3) of the Trade Act of 2002. The underlying premise essentially asserted in this context is that Congress, in enacting section 343 of the Trade Act, effectively repealed any authority that Customs might have had to request advance manifest information under 19 U.S.C. 1431.

Customs Response: Customs has concluded that both 19 U.S.C. 1431 and section 343(a) of the Trade Act of 2002 co-exist within the Customs laws and the enactment of section 343(a) of the Trade Act did not and was not intended by Congress to implicitly repeal Customs authority to collect manifest information under section 1431. Briefly stated, therefore, Customs retains the authority under section 1431(b) and (d) to require the advance presentation of vessel cargo manifest information in accordance with the regulations being issued today.

In addition, Customs will issue regulations, in accordance with section 343(a) of the Trade Act of 2002, that will require the advance electronic transmission of information on cargo destined for importation into the United States by vessel, vehicle or aircraft. In this regard, Customs will reconcile those regulations that are issued under the authority of section 343(a) with the regulations that are being issued today under the authority under 19 U.S.C. 1431.

Bulk and Break Bulk Cargo

Comment: Several commenters inquired as to whether the 24 hour rule would apply to bulk and break bulk cargo. Many commenters requested that only certain data elements be required for such manifest submissions. Others commented that the Coast Guard 96 hour report of arrival requirements should be used for bulk and break bulk carriers for manifest submission to U.S. Customs in the United States.

Customs Response: Customs has determined that the proposed rule will be amended in this final rule to provide that bulk cargo as defined in the rule will be exempt from the 24 hour rule; and, further, that break bulk cargo may be exempted from the 24 hour rule on a case by case basis. Companies that are exempted from the 24 hour rule must submit their cargo declaration information to U.S. Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program or upon arrival if they are non-automated carriers. In response to the comment that the Coast Guard 96 hour report of arrival requirements should be used, the Coast Guard has merely proposed that requirement at this time. While Customs agrees with the idea, this cannot be implemented until the Coast Guard requirement is adopted.

First, regarding bulk cargo, Customs defines such cargo as homogeneous cargo stowed in bulk, that is to say, loose in the hold and not enclosed in any container such as boxes, bales, bags, casks, and so on. It is also called bulk freight. Reference to a maritime dictionary reveals bulk cargo to be composed of (1) free flowing articles such as oil, grain, coal, ore, and so on, which can be pumped or run through a chute or handled by dumping; (2) articles that require mechanical handling such as bricks, pig iron, lumber, steel beams and so on.

Second, Customs also recognizes that there are concerns that carriers have with other types of cargo known as break bulk. Break bulk is cargo that is not containerized, but which is otherwise packaged or bundled. This type of cargo may raise the same types of concealment and smuggling concerns as containerized cargo. Consequently, as indicated above, a carrier of break bulk cargo may apply for an exemption from the 24 hour rule; Customs will evaluate each application on a case by case basis.

To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with

the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C–TPAT (The Customs-Trade Partnership Against Terrorism).

If Customs, by written response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

Customs may rescind an exemption granted to a carrier at any time.

As noted above, companies receiving exemptions must submit their cargo declaration information to U.S. Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program or upon arrival if they are non-automated carriers.

Non Vessel Operating Common Carriers Eligible to Participate

Comment: In the August 8, 2002, proposed rule, Customs stated that Non Vessel Operating Common Carriers (NVOCC) licensed by the Federal Maritime Commission (FMC) would be eligible to become bonded with Customs and to electronically transmit manifest information directly to Customs. Several commenters pointed out that a separate category of NVOCC is not licensed by the FMC, but rather is registered with the agency. This latter group, unless identified by Customs as eligible to participate, would be unable to transmit information directly to Customs prior to foreign lading. It is requested that Customs allow registered NVOCCs to participate. In addition, one commenter advocated that shippers' associations, like NVOCCs, should be authorized to present the required manifest information electronically to Customs.

Customs Response: Customs agrees that to the extent that members of the NVOCC community registered with the FMC become bonded with Customs, they should be included in the electronic filing program. Customs in this final rule has amended the proposed regulatory language in this regard to reflect this change. However, shippers' associations may not participate in the electronic filing program. Such associations of shippers are membership-only groups that are not currently regulated under U.S. law, and they are not licensed or registered with the FMC.

Confidentiality of Manifest Information

Comment: A number of commenters addressed the issue of the confidentiality of certain manifest information. The views expressed really concerned two different aspects of the need for confidentiality—that involving business and competitive advantage and that involving the matter of cargo security.

One group, consisting primarily of the Non Vessel Operating Common Carrier (NVOCC) community, expressed concerns that the information which would be supplied to Customs under the proposed new procedures would be subject to release for publication. It was stated that such release would reveal confidential business information which could result in harm to the NVOCC community. It was suggested that NVOCC filers should be permitted to make biennial confidentiality certifications to Customs on behalf of the importers or consignees, pursuant to statute, which allows only the importers or consignees to submit biennial certifications for confidentiality of certain manifest information. It was also suggested that Customs should consider an NVOCC to be an ''attorney in fact'' for certification filing purposes since our regulations currently allowed an attorney of an importer or consignee to submit a certification on behalf of that importer or consignee.

The second confidentiality concern expressed by commenters involved the matter of the security of the cargo itself. It was suggested that if Customs released certain manifest information shortly after its receipt, information identifying cargoes could be published even before vessels departed foreign ports bound for the United States.

Customs Response: Customs recognizes the confidentiality concerns stated by these commenters. The premature disclosure of information about incoming cargo, particularly sensitive shipments, such as chemicals and the like, could not only undermine business relationships; it could also enable terrorist or criminal organizations, having advance information about incoming cargo, to attempt the theft or destruction of such cargo prior to or upon its arrival in the United States.

Accordingly, in response to these matters, Customs intends to address these concerns to the extent allowable under existing law. To this end, 19 U.S.C. 1431(c) limits the parties eligible to make a necessary confidentiality certification to include only importers and consignees. While our regulations currently allow an attorney of an importer or consignee to file a client's certification, Customs simply cannot designate an NVOCC to be an ''attorney in fact'' for certification filing purposes. Proposed amendments to Part 103 of the Customs Regulations (19 CFR part 103) would be necessary. Given this fact, Customs will be issuing a separate **Federal Register** Notice of Proposed Rulemaking in the near future to expand upon those parties who may file a biennial certification on behalf of the importer or consignee. An immediately available option, however, is for NVOCC manifest information filers to request appropriate importers and consignees in the United States to file certifications with Customs on their own behalf, thus protecting the same range of information which is sought to be protected here.

With regard to the concern that release of advance information prematurely can raise new security concerns, Customs will not be releasing information from cargo declarations until the complete manifest is filed with Customs. The statutory provision under consideration, 19 U.S.C. 1431(c), provides for the release for public disclosure of information, when contained in a vessel manifest. The statute does not specify when the information must be released to the public pursuant to 19 U.S.C. 1431(c). (Section 4.7 of the Customs Regulations (19 CFR 4.7) specifically identifies those documents comprising a vessel ''manifest''; such documents comprising the vessel manifest include the Vessel Entrance or Clearance Statement (CF–1300); Cargo Declaration (CF–1302); Ship's Stores Declaration (CF–1303); Crew's Effects Declaration (CF–1304, or optional INS Form, I–418); Crew List and I–418; and, Passenger List with I–418.)

The August 8, 2002, document published in the **Federal Register**, by proposing to require advance filing of Cargo Declaration information, specifies that only a *portion* of a vessel's manifest, the CF 1302 information, must be presented or transmitted prior to foreign lading. This requirement goes only to certain data which is made part of the larger manifest requirement. The manifest itself is filed with Customs at the time of vessel entry in any of the various ports of the United States. No information can be said to be contained in a ''vessel manifest'' as provided in section 1431, until the complete manifest is made available to Customs. Therefore, the release of information from manifests must await their filing of the entire and complete manifest with Customs at the time of formal entry of vessels in the United States.

Bonds for Non Vessel Operating Common Carriers (NVOCCs)

Comment: One commenter stated that the proposal to amend provisions of the

Customs International Carrier Bond as presently set forth in § 113.64 (19 CFR 113.64) would be inappropriate since an NVOCC did not actually transport merchandise. Concern was also expressed that an NVOCC could be held accountable by Customs for delivery of cargo to an incorrect port of unlading by a carrier. Likewise, there was concern that an NVOCC could incur manifest violation penalties in instances where data was relayed to Customs by the NVOCC at least 24 hours in advance of scheduled vessel sailing time, but the vessel then loaded and departed earlier than scheduled.

Customs Response: It is the current practice that vessel agents in the United States carry continuous International Carrier Bond coverage (19 CFR 113.1). They, likewise, do not transport cargoes. They are bonded in order that Customs may be assured that the revenue is protected and that prompt satisfaction of any liabilities incurred in the course of their dealings with Customs may occur. Likewise, the NVOCC community will be dealing with Customs and will be required to provide the same level of assurance with respect to the correctness of the information they submit. Provided the NVOCC adequately demonstrates that cargo declaration information was timely submitted to Customs and the carrier then loaded the containers prematurely, the NVOCC will not be liable.

Comment: A commenter inquired as to how Customs would set bond amounts for NVOCC activities, and whether guidance to the ports would be forthcoming. The concern was that guidelines be made proportional to any claims for liquidated damages assessed against these parties.

Customs Response: Customs port directors retain discretion for setting bond amounts in their respective jurisdictions. Customs Headquarters does intend to issue policy guidance on bond coverage specific to NVOCC activity. As in the past, such guidance will establish a minimum bond amount to be required. Using their discretion under our regulations, port directors are authorized to set higher amounts based upon their experience in the ports of entry.

The guidelines provided to ports will not include guidance regarding proportionality of liquidated damages claims. Such claims are, as always, dependent upon the factual circumstances involved in any particular transaction relating to the breach of the bond conditions.

Permits To Unlade in United States Ports

Comment: A few commenters addressed the issue of Customs granting permits to unlade merchandise in ports of the United States. The concern was that an entire vessel could be denied permission to unlade in circumstances where only a portion of the cargo was non-compliant with the rule on 24 hour advance notification to Customs. Port Authorities also expressed concern over potential port congestion.

Customs Response: The statute governing the issuance of permits to unlade merchandise in the United States, 19 U.S.C. 1448, expressly provides that no merchandise shall be unladen from any vessel until entry has been made and a permit for the unlading of the same has been issued by the Customs Service. To the extent that Customs has identified a portion of arriving cargo which has not been laden in accordance with the requirements of the regulations, Customs has the authority to process that portion differently from the remainder. Customs will allow unloading of that portion of the cargo that has been laden in accordance with the regulations, unless circumstances require otherwise.

Liability Concerns and Legal Responsibilities

Comment: Several commenters raised questions about various liability issues specifically relating to which party was legally responsible under penalty of law for submitting accurate manifest information to Customs; for any errors and omissions that were contained in submitted manifests; and for the failure to file manifests timely. Additionally, it was asked who would be responsible when manifested freight was left behind and was not delivered to the port for which it was manifested; or when diversions from or changes to the original port of call resulted in freight being delivered to a port other than the one for which the freight was manifested.

Customs Response: Customs may initiate penalty actions against any party responsible for providing the required information. For example, if a non-vessel operating common carrier (NVOCC) elects to participate in the vessel Automated Manifest System (AMS) and transmits its information directly to Customs, the NVOCC is the responsible party and will be held liable for any manifest information found to be untimely presented and/or containing errors or omissions. This would also be the case if the NVOCC manifested cargo and the cargo is left behind. Timely communication between the vessel carrier and the NVOCC is required in order for the NVOCC to amend its manifest information to accurately list the cargo that is on board the vessel. Likewise, effective communication between the vessel carrier and the NVOCC is essential for changes to the ports of call and diversions of the vessel.

If an NVOCC is a participant in the vessel AMS program, the NVOCC will be treated as a carrier for Customs purposes. Vessel operators who currently slot charter to other vessel AMS carriers will utilize the same procedures for notification that the slot charterer has used in providing its manifest to Customs. A slot charterer is a carrier leasing space on a vessel owned or operated by another carrier on a space available basis. The vessel operator is only responsible for ensuring that the NVOCC's Standard Carrier Alpha Code (SCAC), as described in 19 CFR 4.7a(c)(2)(iii), is included on the Customs Form (CF) 3171 that is presented to Customs. Failure to present the SCAC of all NVOCCs and slot charterers on board the vessel will result in a penalty against the vessel carrier under 19 U.S.C. 1436.

Comment: A number of commenters asked for confirmation that Customs would not require containers to be off loaded for examination once clearance to load had been given. It was asked who would be liable for the costs incurred if Customs required unloading of a container at an intermediate foreign port.

Customs Response: Customs will follow the current procedures for the examination of containers. Customs does not anticipate that a container already loaded in compliance with this rule would be required to be unloaded for examination except in exigent circumstances. In these rare instances, the carrier will be assessed the costs.

Automated Commercial Environment (ACE)

Comment: Several commenters questioned how the proposed rule would link to the Automated Commercial Environment (ACE) program and whether partial bill of lading information could be reported to Customs. It was also requested that Customs enlarge the scope of those participants who were eligible to provide manifest information to include brokers, shippers and importers.

Customs Response: The current system that Customs utilizes for electronic transmissions of vessel manifest data is the Vessel Automated Manifest System (AMS) which is a

component of the Customs Automated Commercial System (ACS). This system will not allow for brokers, importers or shippers to input manifest information. Additionally, this system will not accept partial bill of lading data to be transmitted by the carrier. The carrier will receive a reject message on that bill of lading.

The ACE system is the new automated system being designed by Customs and it is in the developmental stages, consequently a precise answer as to how this will be handled under ACE is not available now. Working groups consisting of representatives from several Government agencies and the trade community have been continually meeting to ensure all issues and concerns are discussed and presented properly. The Trade Support Network (TSN) is one of these working groups and the appropriate subcommittee of the TSN will examine how the ACE program will meet the objectives of this rulemaking. Interested parties can get additional information as to the development of the ACE program at *www.customs.gov.* Users should select the Customs Modernization icon on the website, then type the letters ''TSN'' into the search box.

Maintaining a Paper Manifest on Board the Vessel

Comment: Several commenters referred to the need for vessel carriers to maintain an original/copy of the manifest on board the vessel.

Customs Response: The requirement to carry the paper manifest on board the vessel was waived during a Vessel Paperless Manifest Test. The test procedures will be amended by the effective date of this rule to state that vessel carriers must submit their cargo declaration information to Customs 24 hours prior to lading at a foreign port. The participants in the Vessel Paperless Manifest Test will not be required to maintain a paper copy of the manifest on board the vessel; however, one must be provided upon request. All carriers not participating in the test must maintain a paper copy of the complete manifest on board the vessel.

Comment: Several commenters inquired whether carriers would be required to submit a final manifest prior to arrival in order to be permitted to unlade or whether the individual manifest reports submitted in advance would suffice.

Customs Response: The distinction between a manifest and a cargo declaration must be appreciated. The cargo declaration is one of several documents which, when taken together, constitute a vessel manifest. In this rulemaking, by requiring the submission of cargo declaration information 24 hours prior to lading, Customs is eliminating the requirement for vessel carriers to submit an additional cargo declaration upon arrival in the United States. However, the remaining documents comprising the vessel manifest must be available for presentation upon entry of the vessel.

Requirements for U.S. Virgin Islands

Comment: Various commenters sought clarification as to whether vessels operating from the U.S. Virgin Islands to the United States were included in the proposal. It was pointed out that shipments from the continental United States to Puerto Rico, Hawaii or Alaska would not be subject to the proposed advance manifest regulations.

Customs Response: Vessels destined to Puerto Rico, Hawaii, and Alaska from the continental United States are considered to be operating between points in the Customs Territory. The U.S. Virgin Islands is located outside the Customs Territory and therefore vessels departing from there to the U.S. are subject to the 24 hour advanced manifest rule.

Military Cargo

Comment: A number of commenters asked if the proposed rule applied to military cargo or other government shipments.

Customs Response: Carriers of military cargo and other U.S. Government shipments are required to comply with the advance manifest regulations.

Clarification of Data Elements

Comment: Several commenters requested clarification of the data elements required to be included on the cargo manifest.

Customs Response: Customs has revised the regulations to include additional explanation and descriptive information, where appropriate, for those data elements that must be contained in the vessel's cargo manifest.

Comment: Several commenters stated that requiring a precise description of the cargo would result in ''dummy'' information being presented to Customs and that certain data elements were not known until after the lading of containers. Additionally, if shippers were to attempt precise cargo descriptions, the result would be numerous corrections having to be made to the manifest as the vessel approached the United States.

Customs Response: The so called ''dummy'' cargo descriptions are exactly what Customs cannot accept because they undermine our efforts to target threats to national security. Therefore, Customs is now requiring accurate cargo descriptions. Generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable. Moreover, general characterizations such as ''chemicals'' or ''foodstuffs'' will be considered overbroad.

Comment: Several commenters requested clarification on whether the proposed rule required the consignee name to be listed, or if it required the consignee name only if one were already provided when cargo was presented for shipment. Clarification was specifically requested on: Whether the owner or owner's representative meant the cargo owner; if there were a consignee, whether the shipper could decline to disclose the consignee by naming the cargo owner; and, whether the owner was to be listed only if there were no consignee indicated.

Customs Response: The only time a consignee name would not be recorded is in the case of ''to order'' shipments where the merchandise is sold in transit. Many ''to order'' entities are listed as the consignee. A ''to order'' consignee is not the true consignee, but rather only an interested party, such as a bank, which is securing payment. Either the party holding title to the goods (the owner) or that party's representative has the real interest in a shipment. Accordingly, the owner or owner's representative is the party that must be listed in place of the consignee in the case of ''to order'' shipments. If the consignee's name is available, however, the shipper must disclose this information.

Comment: A number of commenters requested that Customs clarify which seal number had to be provided: The seal of the shipper, the seal of the shipping line, or the Customs seal. Other commenters requested clarification on whether all loaded containers had to have an affixed seal.

Customs Response: For all sealed containers, the number that must be identified is the seal number of the last person/company to load the container. Participants in C–TPAT (The Customs-Trade Partnership Against Terrorism) must affix seals to all loaded containers.

Comment: Some commenters asserted that it was impossible to report the ''actual boarded quantities'' as required by proposed § 4.7a(c)(4)(x) 24 hours before the cargo was ''actually'' boarded.

Customs Response: Customs recognizes the validity of the comments. Accordingly, we are removing this data element from the final rule. This matter

will be addressed in a separate **Federal Register** Notice of Proposed Rulemaking concerning Manifest Discrepancy Report filing.

Co-Loading

Comment: Commenters questioned whether the proposed rulemaking would put an end to ''co-loading.'' Co-loading would occur when several NVOCC firms combined their cargo for movement under one NVOCC's master bill of lading, and each NVOCC had its own sub-set of house bills of lading and related manifests. Specifically, the scenario was presented where an automated NVOCC co-loaded with a non-automated NVOCC and the non-automated NVOCC presented the container to the vessel carrier. The question posed in this context was whether the manifest information would remain confidential and not be provided to the vessel carrier. In addition, clarification was requested as to whether the shipper, consignee, and cargo description information from all NVOCC house bills of lading (Master NVOCC and co-loading NVOCC) had to be included in the advance cargo manifest filing.

Customs Response: The rulemaking will not put an end to co-loading. If an automated NVOCC co-loads with a non-automated NVOCC and the non-automated NVOCC presents the container to the vessel carrier, the automated NVOCC is required to present its own bill of lading for that shipment directly to Customs via vessel AMS. The non-automated NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier for presentation to Customs via vessel AMS. Automated NVOCCs will not be authorized to submit paper manifests to the vessel carrier. The automated NVOCC who is co-loading should be aware, however, that its shipment could be held for examination based on Customs not receiving timely manifest information in the United States.

If the situation is reversed and the non-automated NVOCC co-loads with the automated NVOCC with the automated NVOCC presenting the container to the vessel carrier, the automated NVOCC is required to transmit all bills of lading in the container via vessel AMS. Non-automated NVOCCs that have shipments as part of a co-loaded container must fully disclose and present the required manifest information for their cargo to the automated NVOCC who would be required to present this information to Customs via vessel AMS. Each individual shipment must be input into the vessel AMS program with each individual shipper and consignee being identified along with the cargo description. Bills of lading stating the non-automated NVOCC to be either the shipper or consignee or setting forth the cargo description as ''consolidation'' is not authorized.

Non-automated NVOCCs thus have two options to submit manifest information to Customs. The options are: (1) Submit manifest information, in paper, directly to the vessel carrier who is required to input all bills of lading from the non-automated NVOCC into the vessel AMS program; or (2) Become a participant in the vessel AMS program and submit manifest information to U.S. Customs either directly or through an automated Service Provider, Port Authority, or Vessel Agent. Only under the second option will the manifest information of a non-automated NVOCC remain confidential (not be disclosed to the vessel carrier). In any case, regardless of the option chosen, the non-automated NVOCC is required to abide by the 24 hour advance manifest rule.

As stated in 19 CFR 4.7a, NVOCCs that receive cargo in sealed containers from the shipper can rely on the shipper's declaration. This section provides specific language to be used with ''shippers load and count.'' However, in vessel AMS the shipper must be identified, not the NVOCC.

Vessel AMS Procedures

Comment: Several commenters indicated that vessel AMS needed to be programmed to allow for the ocean carrier to update certain data elements even if the ocean carrier had not initiated the data transmission. In addition, requests were made to allow for a single transmission of individual bills of lading to Customs.

Customs Response: The AMS program does not allow parties to change, add or delete manifest information on a transaction they have not initiated. Ocean carriers, NVOCCs and slot charterers need to communicate and provide lading information to the responsible parties in order to eliminate the possibilities that either cargo is laden on board without being properly manifested, or without appropriate changes being made to the bills of lading. The vessel AMS program was not designed to allow for the transmission of individual bills of lading, and such transmissions must be sent by batch. This matter is under review for inclusion in the ACE program.

Comment: Several commenters requested clarification of the procedures upon vessel arrival in the first U.S. port relating to manifest filing, and time frames for submitting to Customs a permit to unlade on Customs Form (CF) 3171.

Customs Response: Vessel carriers must submit their CF 3171s 48 hours prior to arrival in the United States. Except for participants in the vessel paperless manifest test, vessel carriers, NVOCCs and slot charterers are required to submit manifests for empty containers on board to U.S. Customs 24 hours prior to arrival in the United States.

Comment: Some commenters requested clarification on the process by which vessel carriers and NVOCCs, who were not automated, would present their paper manifests to Customs for both CSI and non-CSI ports. Clarification was also requested on the process for submitting manifest information to Customs during computer down times and when unsuccessful transmissions occurred.

Customs Response: In presenting paper cargo declaration information to Customs at a CSI port, the authorized representative for the vessel carrier is required to submit directly to U.S. Customs officials at a designated site for that CSI port. The exact procedures for this process will vary from country to country based on various agreements signed under the CSI program. Each CSI location will determine the process based on these agreements. The U.S. Customs Service will provide detailed information to the trade community upon completion of signed agreements in each of the CSI locations.

For those vessel carriers presenting paper cargo declaration information to Customs at non-CSI ports, the companies are responsible for ensuring that their cargo declaration information is provided to Customs in the United States 24 hours prior to lading at the foreign port. Facsimiles and non-AMS electronic messages sent directly to Customs are not authorized. Non-automated vessel carriers may either enlist the automated services of a Vessel Agent, Service Provider, local Port Authority, or a business partner in the U.S. The domestic party in receipt would deliver the cargo declaration information directly to Customs. Paper cargo declaration information must be presented to each intended U.S. port of arrival 24 hours prior to lading at a foreign port. However, due to the fact that the non-automated vessel carrier has elected to submit paper cargo declaration information directly to Customs in the United States, the non-automated carrier is responsible for ensuring that complete cargo

declaration information for each port of call in the United States (via the paper procedure outlined in the paragraph below) is submitted to each Customs location for review 24 hours prior to lading at the foreign port. Failure to do so could result in penalties or denial of unlading privileges.

In presenting cargo declaration information to Customs, a non-automated vessel carrier may utilize an automated domestic Vessel Agent, Service Provider, or Port Authority; or the non-automated carrier may utilize either an automated or non-automated business partner. Where the carrier utilizes an automated party to present cargo declaration information electronically to Customs, notification of holds will be conducted via the vessel AMS program. However, if a non-automated vessel carrier chooses to submit its information via a domestic representative using paper, Customs will notify the local U.S. representative of any holds. This notification will be indicated on a document that the local representative may pick up at the Customs port offices. It will be the local U.S. representative's responsibility either to provide necessary information to the ocean carrier or to provide a copy of relevant documentation to the foreign entity who in turn must provide a copy to the ocean carrier. Port directors in local ports will provide the details on the location for submitting paper cargo declaration information and the location and time that the notification document can be obtained.

In presenting cargo declaration information to Customs, non-automated NVOCCs may utilize an automated Service Provider, Vessel Agent, or Port Authority; however, a non-automated NVOCC may not utilize a non-automated business partner. U.S. Customs will not accept paper cargo declaration information from any automated party, which has originated from a non-automated NVOCC.

With reference to unsuccessful transmissions through the vessel AMS program, Customs conducts testing programs with the participants prior to their going on-line to ensure that their computers are both sending and receiving accurate messages. Customs will not allow a company to go on-line if they have not successfully completed this testing program.

The down time issues that have been raised are outlined in current Customs Directive 3240–075, Vessel Automated Manifest System, that is available to the trade community. Current acceptable down time is 2 hours; however, it is within the port director's discretion to allow more than the recommended 2 hours if circumstances warrant. Carriers whose systems are down for extended periods of time should notify their assigned client representative and refer to the procedures outlined in the directive on how to submit paper cargo declaration information to Customs.

Comment: Various commenters asked that Customs authorize exemptions for submission of any data elements which were viewed as being out of the control of an NVOCC.

Customs Response: The vessel AMS program will not accept an absence of data elements. If all required information is not entered, the vessel AMS program will send a rejection message to the transmitting party. We note that there are slot charterers who are automated and who have been consistently operating without any difficulty. Vessel carriers, NVOCCs and slot charterers must have procedures in place so that if containers have been manifested by an NVOCC or a slot charterer and subsequently are not laden, the vessel carrier must notify the NVOCC or slot charterer in order that they may amend their manifests to show corrected information.

Comment: Some commenters inquired as to how Customs would know when goods had been laden since the lading process was one that occurred over a period of time.

Customs Response: Customs considered requiring an additional data element for carriers to indicate the estimated time of lading. It was determined that such a requirement would be an additional burden to the carriers, and potentially unnecessary. Carriers understand the logistics of their business, and Customs will rely on them to provide the required information 24 hours prior to lading. Indeed, they have every incentive to do so—in addition to penalties, any carrier that begins the lading process without providing manifest information 24 hours before will be required to remove any containers that are identified for examination and which have already been laden.

Comment: Several commenters asked about the procedures needed to identify the initial manifest transmission to Customs and when amendment transmissions were made to the manifest.

Customs Response: The vessel AMS program has a transaction screen that allows the inspector to view all postings against each bill of lading. This means that each time a bill of lading is changed, added or deleted, Customs receives these transactions.

Comment: A few commenters requested clarification on how the ocean carrier would determine if an automated NVOCC had submitted manifest information directly to Customs.

Customs Response: Vessel AMS has a field identified as the Second Notify Party. The Second Notify Party lets the vessel carrier know when a bill is on file, and gives the vessel carrier the hold messages as well as all associated releases. Although this has not been a mandatory field in the past, Customs will now require this field to be completed by all automated NVOCCs and slot charterers.

Comment: It was asserted that if a hold notification were not sent to the carrier at the port of loading but rather to an NVOCC located in a different time zone from the carrier, it would affect being able to respond rapidly to requests from Customs. It was observed that different time zones could cause confusion as to when the 24 hour period had expired.

Customs Response: Carriers and NVOCCs will have to establish lines of communication for such circumstances. Customs will send notifications of a bill of lading on file to the party that provided the information to Customs in vessel AMS. The bill on file with Customs has a date and time stamp in vessel AMS, using Eastern Standard Time. Additionally, utilization of the Second Notify Party function in vessel AMS will allow for provision of additional information to the vessel carrier when an automated NVOCC or slot charterer receives hold messages on containers.

Load/No Load Messages to the Carriers

Comment: Several commenters requested that carriers be given confirmation for every container or shipment that Customs approved for lading. Some commenters inquired as to whether an absence of notification to carriers by Customs would serve as an authorization for lading. Other commenters requested that carriers be allowed to begin lading after a specified period of time, but prior to the expiration of the 24 hour period.

Customs Response: Customs agrees in principle with the notion of providing electronic confirmation messages to carriers which would authorize the lading of containers. However, the necessary programming cannot be accomplished before the regulations are implemented. Research will be undertaken to determine whether this capability in the vessel AMS program is feasible.

Until the completion of work in vessel AMS allowing confirmation messages, Customs will not allow lading prior to expiration of the 24 hour period and

will utilize the current operating procedures under which filers receive hold messages only.

Business Practice Issues

Comment: Numerous commenters questioned the viability of obtaining detailed manifest information 24 hours prior to loading of cargo on board a vessel. In this respect, some commenters expressed concern over the impact of the requirement on the efficiency of their commercial operations, while other commenters focused more on the financial impact of the 24 hour requirement on their operations.

A major concern was that movement of cargo would be disrupted and/or delayed due to the detailed level of manifest information required because the information may not readily be available before cargo is loaded onto a vessel. It was feared that the new requirements could cause cargo to miss sailing dates and remain at docks which did not have adequate security or space available to store containers.

The issue concerning financial impact involved changing business practices such as: Routing of vessels, work practices, personnel increases, automation costs including the cost of acquiring a bond, and the leasing of storage facilities.

Customs Response: With regard to the concern that the proposed rule may adversely affect the efficiency of international shipping operations, Customs recognizes this legitimate concern and has taken at least three steps to address it in the development of the CSI and this rulemaking. First, it is important to note that it is the information about the contents of a shipping container, not the container itself, that must be presented to Customs 24 hours prior to lading at a foreign seaport. Under this rule, so long as the required information is provided to Customs 24 hours in advance of lading, the container itself may be brought to the seaport at a later time. Second, the development of this rule and the CSI have been designed to take advantage of the existing shipping cycle. In most foreign seaports, containers destined for the United States are often stored at terminals for several hours or several days before lading. This provides ample opportunity for Customs and its foreign CSI partners to identify and screen potentially high-risk containers within the normal shipping cycle and without causing any unnecessary delays. Third, as noted above, by screening potentially high-risk containers at foreign seaports during the normal shipping cycle, Customs should be able to significantly expedite the movement of containers upon arrival in the United States. This should not only reduce delays associated with targeting and screening containers upon arrival in the United States, it should also add greater predictability to the movement of containers through domestic seaports.

Customs recognizes that some changes to business practices may be required in order to transmit the manifest data required under this rule. For example, although much, if not all, of the data required by Customs is available prior to lading because it is derived from information in the possession of carriers and NVOCCs or contained in the commercial documents generated prior to lading, Customs recognizes that businesses may not currently be configured to collect and transmit such information in compliance with the rule. This is one of the reasons that Customs has elected to phase-in enforcement of the rule over a 60 day period after the regulation goes into effect—to strike an appropriate balance between the needs of business and the need of the government to address the immediate threat that international terrorist organizations pose to the United States and the global economy.

Customs also recognizes that not all potential changes to supply chain or business practices can be anticipated in the promulgation of a proposed rule or in the comments it generates. Accordingly, Customs will carefully monitor the implementation of the rule and, as noted above, Treasury is inviting COAC to create a subcommittee to advise Customs on operational concerns arising from the implementation.

Comment: It was contended that requiring cargo manifest information to be submitted to Customs 24 hours before lading the cargo aboard the vessel at a foreign port would run counter to the ''just in time'' inventory practices in wide use today.

Customs Response: Customs is requiring transmissions of cargo declaration information 24 hours in advance. Customs is not requiring that the cargo be ready for inspection or that the cargo be at the dock. However, Customs recognizes that this final rule could cause vessel carriers to change the current practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their lading.

Nonetheless, as noted above, most cargo destined for the United States sits at the foreign port for several hours to several days before lading. This regulation will have no effect on that practice.

Comment: Numerous commenters requested generally that procedures required under the proposed rule be clarified. Many of these commenters addressed issues involving private contractual agreements between trade partners. Other matters where it was stated that further clarification was needed dealt with process and manifesting requirements of carriers, NVOCCs, involved ports, transshipment, and feeder vessels.

Customs Response: To the extent that trade partners may enter into private contractual agreements, Customs would have no involvement. Required information will include the data elements mentioned in the rulemaking along with the information that is required on the cargo declaration (CF 1302). These requirements apply at all foreign ports where an inward foreign vessel carrier lades cargo destined to the U.S., including FROB (Foreign Cargo Remaining On Board) which is not going to be unladen in the United States. The term ''inward foreign carrier'' applies to all vessels coming from foreign locations to the U.S. A vessel that transships cargo between foreign locations or a vessel that does not call on a U.S. port is not required to submit manifest information under this rulemaking.

The inward foreign vessel carrier that calls on many foreign ports before the U.S. will not have to re-transmit cargo declaration information already provided from previous foreign ports. Multiple original manifest transmissions can be submitted for the same carrier, vessel or voyage so long as AMS vessel arrival has not occurred. Carriers will only be required to transmit new cargo declaration information for each port of lading. Any NVOCCs and slot charterers, who are authorized to transmit manifest data in vessel AMS, will be subject to the same requirements as the vessel carrier to provide manifest information on cargo destined to the U.S., including FROB, as defined later in this document, at each foreign port of lading.

Lead Time

Comment: Several commenters asked about the time frame that would be given to implement the proposed rulemaking. There were two suggested time frames for implementing the advance manifest regulations that were mentioned repetitively by the commenters: one requested a lead time of six months, and the other requested one year to implement a phased-in approach.

Customs Response: This rulemaking responds to an urgent national security

issue and must be implemented promptly. Customs must begin receiving advanced cargo declaration information to strengthen CSI and to reduce the risk of smuggling weapons of mass destruction and other contraband into the United States. As previously mentioned, however, in recognition of industry concerns, Customs has determined to delay full enforcement for a period of 60 days following the effective date of the new requirements. This, when taken together with the 30-day post publication period generally provided, will allow a total of 90 days from publication date to full enforcement.

Proposed Rule Will Result in Loss of U.S. Ports Business to Canadian Ports

Comment: A number of the commenters were concerned that they would lose business to Canadian ports due to the new regulations. They feared that cargo would initially go to Canada and then come to the U.S. via truck/rail to circumvent the regulations.

Customs Response: Customs has targeting personnel stationed at seaports in Canada and cooperation with Canadian authorities has been excellent. If either Customs administration suspected that goods were being routed in an attempt to evade scrutiny, those goods would be likely to be treated as high risk.

Requirements for ''FROB'' CARGO and NVOCCs

Comment: Several commenters questioned whether the new regulations would apply to FROB cargo (Foreign Cargo Remaining On Board). They also stated that carriers could refuse U.S. bound cargo once faced with the new requirements.

Customs Response: The definition of ''FROB'' cargo is cargo that is loaded in a foreign port and which is to be unloaded in another foreign port with an intervening vessel stop in one or more ports in the United States. Customs considers ''FROB'' cargo a security concern because although the cargo does not have a final destination in the U.S., the cargo is transiting the U.S. Currently, carriers must correctly report FROB cargo upon arrival in the United States. Under the new regulations, FROB cargo must be reported 24 hours in advance of loading.

Request That Carrier Be Exempt From Rule if Participant in C–TPAT

Comment: Several commenters that were participants in C–TPAT (the Customs-Trade Partnership Against Terrorism) requested that they either be exempted from the advance manifest regulations or that they be allowed to present cargo manifest information at some point before the vessel arrived in the United States, rather than before the vessel departed from the foreign country. It was further requested that there be maintained a ''known shipper list'' which could enable Customs to expedite cargo clearance. These commenters also sought the ability to make changes to manifest information without time constraints being imposed.

Customs Response: While C–TPAT participants will not be excluded from the advance reporting requirements, their participation will be taken into account during the targeting process.

A Denial/Delay in Granting Permit To Unlade Will Cause Port Congestion

Comment: A number of commenters, specifically Port Authorities, were concerned that if permits to unlade were denied the result could be congestion at U.S. ports.

Customs Response: Permits may be granted to unlade properly manifested merchandise on a vessel but denied for the remainder of the cargo for which manifest information has not been accurately and/or timely received by Customs. Thus, depending on the circumstances, only that portion of the cargo for which advance information is not provided may not be unladen. Moreover, if the advance information is not timely provided, the subject cargo should not be laden on the vessel. Therefore, there is no reason to conclude that this final rule will cause congestion at U.S. ports.

Time for Presenting Manifest Should Be When Vessel Departs or Later

Comment: Several commenters stated that the ability to submit their manifest at time of foreign departure or later would be more feasible.

Customs Response: The purpose of this rulemaking is to allow sufficient time for U.S. Customs to review and target cargo that may pose a threat to the U.S., specifically weapons of mass destruction, including nuclear and radiological materials and weapons, and to deny that cargo from being loaded on board vessels before they depart for the U.S. Having to interdict such cargo once it reaches our shores would simply be too late. Customs believes that the 24 hour period specified in the advance cargo declaration regulations is essential to achieving this goal.

Need for Risk Analysis Regarding Implementation of 24 Hour Rule

Comment: Some commenters suggested that Customs conduct a risk analysis before implementing the 24 hour rule.

Customs Response: As noted above, Customs has analyzed the risks that international terrorists pose to the United States and the global trading system. These risks are profound. This analysis led to the development of CSI and the promulgation of this 24 hour advance cargo declaration rule.

The 24 Hour Requirement Is Too Long for Short Voyages/Hauls

Comment: Several commenters indicated that 24 hours was too much time to ask for information in advance for voyages that were less than 24 hours in length.

Customs Response: Customs will not exempt short hauls from the regulation. Cargoes placed aboard vessels on short voyages pose the same potential risks as those laded aboard vessels on longer voyages. Customs recognizes that compliance with the regulations may require certain changes in business practices, as previously discussed, but these changes are necessary to protect the United States and global shipping.

Handling of Empty Containers Aboard Vessels

Comment: Several commenters asked whether the advance manifest regulations required that empty containers be manifested and whether, if so, information would have to be submitted to Customs 24 hours in advance. Additionally, it was stated in this connection that empty containers were used to complete stowage plans and were loaded at the last minute, depending on available space. It was stated that carriers would be faced with additional costs for the storage of empty containers if they did not make the voyage.

Customs Response: Carriers will not be required to submit information on empty containers 24 hours in advance of lading. For vessel AMS participants, information on empty containers must be submitted on a single bill of lading which lists all container numbers. For those carriers that present paper cargo declarations, empty containers must be listed on a single paper bill of lading with all container numbers listed. Submission of the empty container manifest information, whether paper or automated, will be due to U.S. Customs at least 24 hours prior to arrival in the United States, with the exception of those participants in the current vessel paperless manifest test, who must continue to file manifest information for empty containers 48 hours prior to arrival in the United States.

Correction of Manifest Information

Comment: Several commenters raised the question of whether they would be permitted to update information which was provided to Customs prior to lading while they were enroute to the United States.

Customs Response: The main goals of the advance cargo declaration information program are (1) to receive accurate information (2) prior to lading in a foreign port. Only in this way can Customs use all of its targeting tools to identify potentially high risk shipments and prevent them from being placed aboard vessels in the first place. Accurate information is essential if Customs is going to be successful in preventing terrorists from using sea carriers to transport instruments of terrorism to the United States. We recognize, however, that updated or different information may be provided to carriers after lading. As this information would assist in our efforts to assess the risks associated with those shipments, we would expect to be provided with such information, and will ensure that there are mechanisms to do so. It must be understood, however, that an acceptance of certain changes in information after foreign lading will not justify any initial submission which is not, to the best information and belief of the filer, true and complete at the time of submission. Indeed, Customs will not tolerate such practices.

Customs recognizes that to accommodate manifest updates and changes, amendments will be necessary to our regulations governing the filing of Manifest Discrepancy Reports. Such changes will be the subject of a separate **Federal Register** publication as soon as possible.

Comment: Several commenters inquired about manifest discrepancy reports. It was asked whether carriers would be able to rely on the shippers' declaration regarding the contents of sealed containers. In addition, confirmation was requested that carriers would not be subject to penalties for incorrect manifest information provided by shippers.

Customs Response: As indicated in the prior response, Customs will be providing new rules for manifest discrepancy reports. A Notice of Proposed Rulemaking covering that matter will be published in the **Federal Register.** Until such time, carriers must continue to follow the current regulations concerning manifest discrepancy reports. This includes the guidelines for carriers using the shipper's declaration on sealed containers. Customs will not allow the manifest discrepancy report to be utilized in lieu of the provision of accurate and complete manifest information under the 24 hour rule.

Regulatory Flexibility Act; Executive Order 12866

Comment: Three commenters contended that the proposed advance manifest regulations would have a significant economic impact on a substantial number of small businesses, specifically non-vessel operating common carriers (NVOCCs), under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and thus should be subject to the preparation of a regulatory flexibility analysis as provided under the RFA. Two of these commenters also asserted in this context that the proposed rule constituted a ''significant regulatory action'' under E.O. 12866.

Customs Response: Customs is requiring advance manifest information in order to improve security at our nation's seaports and to more effectively enforce against all types of smuggling through our nation's borders. The information that Customs is collecting pursuant to this rulemaking is a necessary part of accomplishing these goals. Because the information being requested is information to which the master of the vessel should already have access, there is no indication that providing the additional information on the Customs Form (CF) 1302 to Customs 24 hours in advance of lading at the foreign port would result in a significant economic impact on a substantial number of small businesses.

Moreover, Customs has given the option to any small businesses involved in providing this information of providing the advance manifest information in paper form, rather than electronically, for those businesses that are not yet automated. Likewise, for those businesses that are automated, the advanced electronic filing would ultimately reduce filing costs because of the ability to submit the information electronically directly to Customs. Further, Customs has allowed for a delay of implementation of the new regulations in order to allow time for businesses to adjust to the new filing requirements.

Finally, none of the commenters has submitted evidence to Customs demonstrating the way in which these regulations would have a significant economic impact on small businesses. As such, Customs stands by its initial certification that a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act is not applicable here.

Additionally, whether the Regulatory Flexibility Act applies to certain entities in a rulemaking turns on whether such entities are the ''targets'' of the rulemaking. To this end, the advance cargo manifest regulations that are the subject of this rulemaking are based upon 19 U.S.C. 1431. In pertinent part, 19 U.S.C. 1431(b) requires the master of a vessel (that is, the vessel carrier) to provide vessel cargo manifest information to Customs. It is thus the vessel carriers themselves to which these regulations are directed, and carriers are ultimately responsible under these regulations for providing mandatory cargo manifest information to Customs.

There is no requirement that NVOCCs participate in these advance manifest regulations; rather, Customs is merely affording NVOCCs the option under these regulations to provide cargo manifest data directly to Customs on behalf of the vessel carrier in order to protect what the NVOCC believes to be confidential business information. If NVOCCs do not wish to participate in the filing of advance cargo manifest information with Customs, the NVOCCs may properly elect to provide such information to the vessel carriers directly, for it is the vessel carriers, as emphasized above, that are obligated under these regulations to furnish this information to Customs. At most, therefore, the NVOCCs referenced in this rule are only indirectly affected by the subject regulations due to the nature of their business relationship with the vessel carriers.

In sum, no specific evidence was submitted by commenters establishing that there are a substantial number of small entities that are ''targets'' of the rulemaking.

Because Customs recognizes there will be costs involved in businesses changing their practices to comply with these national security-driven regulations, Customs will phase-in full implementation of this advance manifest rule over a period of 90 days. Specifically, these regulations will not be effective until 30 days after the date of publication of this final rule in the **Federal Register**. In addition, Customs will not initiate any enforcement actions such as assessing penalties for non-fraudulent violations of these regulations until 60 days after the effective date of this final rule. This phased-in implementation regime should reduce and minimize costs involved in complying with the new regulations.

Accordingly, the certification set forth in the proposed rule relating to the inapplicability of the Regulatory Flexibility Act in this case is revised in

this final rule to reflect the foregoing considerations.

Also, we do not believe that this national security-related rule constitutes a ''significant regulatory action'' under E.O. 12866.

Paperwork Burden

Comment: Several commenters stated that the accuracy of the agency's estimate of the information collection burden published in the proposed rule was vastly understated. It was stated that the numbers did not take into consideration the added time and paperwork, even in an automated environment, that will be required by the need for earlier information as supply chain documentation requirements will need to be overhauled.

Customs Response: Customs agrees with the commenters that the estimate of the information collection burden published in the notice of proposed rulemaking is understated and, accordingly, is upwardly adjusting the estimate of the burden.

Customs notes that the adjustment it is making to the estimated burden hours is not entirely due to the requirement to provide manifest information 24 hours prior to lading. Based upon the comments, Customs reviewed the previously approved information collection burden for preparing the vessel manifest and concluded that those numbers needed an upward adjustment. Accordingly, the upward adjustment stated in this document reflects both an adjustment due to this rule and an adjustment to the numbers that existed for the previous long-standing manifesting requirement.

Regarding any increase in burden due to overhaul of supply chain documentation requirements, Customs agrees that the number of hours spent collecting information may initially be high while business practices are adjusting. Eventually, however, Customs expects that the burden will decrease as the supply chain gets used to the new way of doing business.

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

Regulatory Flexibility Act and Executive Order 12866

As stated in Customs response above, Customs is requiring advance manifest information in order to improve security at our nation's seaports and to more effectively enforce against all types of smuggling through our nation's borders. The information that Customs is collecting pursuant to this rulemaking is a necessary part of accomplishing these goals. Because the information being requested is information to which the master of the vessel should already have access, there is no indication that providing the additional information on the Customs Form (CF) 1302 to Customs 24 hours in advance of lading at the foreign port would result in a significant economic impact on a substantial number of small businesses.

Moreover, Customs has given the option to any small businesses involved in providing this information of providing the advance manifest information in paper form, rather than electronically, for those businesses that are not yet automated. Likewise, for those businesses that are automated, the advanced electronic filing would ultimately reduce filing costs because of the ability to submit the information electronically directly to Customs. Further, Customs has allowed for a delay of implementation of the new regulations in order to allow time for businesses to adjust to the new filing requirements.

Finally, none of the commenters has submitted evidence to Customs demonstrating the way in which these regulations would have a significant economic impact on small businesses. As such, Customs stands by its initial certification that a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act is not applicable here.

The advance presentation to Customs of vessel manifest information for cargo destined for the United States as prescribed in this final rule is intended to expedite the release of incoming cargo while, at the same time, ensuring maritime safety and protecting national security. To this end, it is the vessel carriers themselves, which are mostly very large concerns, to which these regulations are targeted and that are ultimately responsible under these regulations for providing mandatory cargo manifest information to Customs.

By contrast, regarding non-vessel operating common carriers (NVOCCs), many of which are asserted to be small businesses, there is no requirement whatever that these entities participate in these advance manifest regulations; rather, Customs is merely affording NVOCCs the option under these regulations of providing cargo manifest data directly to Customs on behalf of the vessel carrier in order to protect what the NVOCC believes to be confidential business information. At best, therefore, the NVOCCs referenced in this rule are only indirectly affected by the subject regulations due to the nature of their business relationship with the vessel carriers. Hence, if NVOCCs do not wish to participate in the filing of advance cargo manifest information with Customs, the NVOCCs may properly elect to provide such information to the vessel carriers directly, for it is the vessel carriers, as emphasized above, that are obligated under these regulations to furnish this information to Customs.

Given the above reasons, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these final regulations do not have a significant economic impact on a substantial number of small entities. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0001 (Transportation Manifest (Cargo Declaration)). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule document is contained in § 4.7a(c)(4). This information is required and will be used to deter smuggling by determining the security conditions under which cargo was maintained prior to and following its delivery for lading aboard a vessel for shipment to the United States. The likely respondents and/or recordkeepers are business or other for-profit institutions. The estimated average annual burden associated with this information collection is 49.8 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S.

Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised to reflect this additional information collection.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Customs duties and inspection, Declarations, Entry, Freight, Harbors, Hazardous substances, Imports, Inspection, Landing, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 113 and 178, Customs Regulations (19 CFR parts 4, 113 and 178), are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citations continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

2. Section 4.7 is amended by revising its section heading; by redesignating the existing text of paragraph (b) as paragraph (b)(1) and revising the first sentence of newly redesignated paragraph (b)(1); and by adding new paragraphs (b)(2), (b)(3), (b)(4) and (e) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b)(1) In addition to any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) For any vessel subject to paragraph (a) of this section, except for any vessel exclusively carrying bulk or break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs must receive from the carrier the vessel's Cargo Declaration, Customs Form 1302, or a Customs-approved electronic equivalent, 24 hours before such cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). Participants in the Vessel Automated Manifest System (AMS) are required to provide the vessel's cargo declaration electronically.

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by or registered with the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo manifest information directly to Customs through the Vessel Automated Manifest System (AMS) 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter); in the alternative, the NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier which, if automated, is required to present this information to Customs via the vessel AMS system.

(ii) A non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. The term ''non-vessel operating common carrier'' does not include freight forwarders as defined in part 112 of this chapter.

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt with respect to that cargo from the requirement set forth in paragraph (b)(2) of this section that a cargo declaration be filed with Customs 24 hours before such cargo is laden aboard the vessel at the foreign port. Any carriers of bulk or break bulk cargo that are exempted from the filing requirement of paragraph (b)(2) of this section must present their cargo declarations to Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program, or upon arrival if they are non-automated carriers. These carriers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be transporting.

(i) A carrier is exempt from the filing requirement of paragraph (b)(2) of this section with respect to the bulk cargo it is transporting. Bulk cargo is defined for purposes of this section as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(A) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(B) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(ii) A carrier of break bulk cargo may apply for an exemption from the filing requirement of paragraph (b)(2) of this section with respect to the break bulk cargo it will be transporting. For purposes of this section, break bulk cargo is cargo that is not containerized, but which is otherwise packaged or bundled.

(A) To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement set out in paragraph (b)(2) of this section. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C–TPAT (The Customs-Trade Partnership Against Terrorism).

(B) Customs will evaluate each application for an exemption on a case by case basis. If Customs, by written

response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

(C) Customs may rescind an exemption granted to a carrier at any time.

* * * * *

(e) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, or who fails to present or transmit the information required by this section in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in paragraph (b)(3)(ii) of this section elects to transmit cargo manifest information to Customs electronically and fails to do so in the manner and in the time period required by paragraph (b)(3)(i) of this section, or electronically transmits any false, forged or altered document, paper, manifest or data to Customs, such NVOCC may be liable for the payment of liquidated damages as provided in § 113.64(c) of this chapter, in addition to any other penalties applicable under other provisions of law.

3. Section § 4.7a is amended by revising the first sentence of paragraph (c)(1), and by adding new paragraphs (c)(4) and (f) to read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* (1) The Cargo Declaration (Customs Form 1302 or a Customs-approved electronic equivalent) must list all the inward foreign cargo on board the vessel regardless of the U.S. port of discharge, and must separately list any other foreign cargo remaining on board (''FROB''). For the purposes of this part, ''FROB'' means cargo which is laden in a foreign port, is intended for discharge in a foreign port, and remains aboard a vessel during either direct or indirect stops at one or more intervening United States ports. * * *

* * * * *

(4) In addition to the cargo manifest information required in paragraphs (c)(1)–(c)(3) of this section, for all inward foreign cargo, the Cargo Declaration, either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent, must state the following:

(i) The last foreign port before the vessel departs for the United States;

(ii) The carrier SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier; see paragraph (c)(2)(iii) of this section);

(iii) The carrier-assigned voyage number;

(iv) The date the vessel is scheduled to arrive at the first U.S. port in Customs territory;

(v) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable (this means that the carrier must transmit the quantity of the lowest external packaging unit; containers and pallets are not acceptable manifested quantities; for example, a container containing 10 pallets with 200 cartons should be manifested as 200 cartons);

(vi) The first foreign port where the carrier takes possession of the cargo destined to the United States;

(vii) A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo'', and ''STC'' (''said to contain'') are not acceptable;

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (The identification number will be a unique number assigned by U.S. Customs upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee or the owner or owner's representative, or identification number, from all bills of lading. (The identification number will be a unique number assigned by U.S. Customs upon implementation of the Automated Commercial Environment);

(x) The vessel name, country of documentation, and official vessel number. (The vessel number is the International Maritime Organization number assigned to the vessel);

(xi) The foreign port where the cargo is laden on board;

(xii) Internationally recognized hazardous material code when such materials are being shipped;

(xiii) Container numbers (for containerized shipments); and

(xiv) The seal numbers for all seals affixed to containers.

* * * * *

(f) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) elects to transmit cargo manifest information to Customs electronically, and fails to do so as required by this section, or transmits electronically any document required by this section that is forged, altered or false, such NVOCC may be liable for liquidated damages as provided in § 113.64(c) of this chapter, in addition to other penalties applicable under other provisions of law.

4. Section 4.8 is amended by revising the second and third sentences of paragraph (b) to read as follows:

§ 4.8 Preliminary entry.

* * * * *

(b) *Requirements and conditions.* * * * The granting of preliminary vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in § 4.7, except that the Cargo Declaration, Customs Form (CF) 1302, must be presented to Customs electronically in the manner provided in § 4.7(b)(2). Vessels seeking preliminary entry in advance of arrival must do so: By presenting to Customs the electronic equivalent of a complete Customs Form 1302 (Cargo Declaration), in the manner provided in § 4.7(b), showing all cargo on board the vessel; and by presenting Customs Form 3171 electronically no less than 48 hours prior to vessel arrival. * * *

* * * * *

5. Section 4.30 is amended by adding a new paragraph (n) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

* * * * *

(n)(1) Customs will not issue a permit to unlade before it has received the cargo declaration information pursuant to § 4.7(b). In cases in which Customs does not receive complete cargo manifest information from the carrier or

from the NVOCC, in the manner and format required by § 4.7(b), 24 hours prior to the lading of the cargo aboard the vessel at the foreign port, Customs may delay issuance of a permit to unlade the entire vessel until all required information is received. Customs may also decline to issue a permit to unlade the specific cargo for which a declaration is not received 24 hours before lading in a foreign port. Furthermore, where the carrier does not present an advance cargo manifest to Customs electronically, in the manner provided in § 4.7(b)(2), preliminary entry pursuant to § 4.8(b) will be denied.

(2) In addition, while the advance presentation of the cargo manifest for any vessel subject to § 4.7(b)(2) may be made in paper form or by electronic transmission through a Customs-approved electronic data interchange system, the submission of an electronic manifest for the cargo in this regard, as opposed to a paper manifest, will further facilitate the prompt issuance of a permit to unlade the cargo.

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.64 is amended by revising the first sentence of paragraph (a); and by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g), respectively, and adding a new paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs. * * *

* * * * *

(c) *Non-vessel operating common carrier (NVOCC).* If a non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter elects to provide vessel cargo manifest information to Customs electronically, the NVOCC, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such manifest information to Customs in the manner and in the time period required by §§ 4.7(b) and 4.7a(c) of this chapter. If the NVOCC, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

19 CFR section	Description	OMB control No.
* *	* *	*
§ 4.7a(c)(4) ..	Transportation manifest (cargo declaration).	1515–0001
* *	* *	*

Robert C. Bonner,

Commissioner of Customs.

Aproved: October 25, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–27661 Filed 10–30–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 02–56]

RIN 1515–AD17

Extension of Import Restrictions Imposed on Archaeological Material From Guatemala; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule document (T.D. 02–56) that was published in the **Federal Register** on September 30, 2002, concerning the extension of import restrictions on certain archaeological material from Guatemala. This document corrects two erroneous references to Mali in the final rule document.

EFFECTIVE DATE: September 29, 2002.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

A final rule document published as T.D. 02–56 in the **Federal Register** (67 FR 61259) on September 30, 2002, extended for a period of five years import restrictions that were already in place for certain archaeological material from Guatemala. The final rule amended § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)).

In the ''Summary'' and ''Background'' sections of the final rule, references to the country ''Mali'' erroneously appeared. This document corrects those references to read ''Guatemala.''

Corrections

In rule FR Doc. 02–24895, published on September 30, 2002, make the following corrections:

1. On page 61259, in the second column, in the ''Summary'' section, remove the word ''Mali'' in the fourth sentence and add in its place the word ''Guatemala.''

2. On page 61259, in the third column, in the ''Background'' section, third paragraph, second sentence, remove the word ''Mali'' and add in its place the word ''Guatemala.''

Dated: October 25, 2002.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 02–27660 Filed 10–30–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–022]

RIN 2115–AA97

Safety Zone; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in San Diego, CA, in support of the San Diego Fall Classic, a marine event consisting of 120 rowing shells racing on a marked course. This temporary safety zone is necessary to provide for

the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6 a.m. (PST) to 12 p.m. (PST) on November 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 02–022] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The San Diego Rowing Club is sponsoring the San Diego Fall Classic, which is held in Mission Bay, San Diego, CA. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the San Diego Fall Classic and is also necessary to protect other vessels and users of the waterway.

Discussion of Rule

This event begins at the south end of Fiesta Island, proceeds north to Radar Island, south to Vacation Island, and proceeds north to El Carmel Point. The safety zone consists of the navigable waters extending 50 yards to either side of the course line, defined more specifically as follows: Starting at a point 32°46′00″ N, 117°13′00″ W, then northwest to 32°46′10″ N, 117°13′45″ W, then north to 32°47′00″ N, 117°13′30″ W, then south to 32°46′15″ N, 117°14′00″ W, then northwest to 32°46′48″ N, 117°14′40″ W. All coordinates are North American Datum 1983.

The Coast Guard proposes to establish one (1) safety zone that will be enforced from 6 a.m. (PST) to 12 p.m. (PST) on November 10, 2002. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the San Diego Fall Classic and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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 Transportation (DOT)(44 FR 11040, February 26, l979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because of its limited duration of six (6) hours and the limited geographic scope of the safety zone.

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 safety zone would not have a significant economic impact on a substantial number of small entities because this safety zone is limited in scope and duration (in effect for only six (6) hours on November 10, 2002). In addition the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

PART 165—[AMENDED]

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

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T11–034 to read as follows:

§ 165.T11–034 Safety Zone; Mission Bay, San Diego, CA.

(a) *Location.* The safety zone consists of the navigable waters extending 50 yards to either side of the course line, defined more specifically as follows: Starting at a point 32°46′00″ N, 117°13′00″ W, then northwest to 32°46′10″ N, 117°13′45″ W, then north to 32°47′00″ N, 117°13′30″ W, then south to 32°46′15″ N, 117°14′00″ W, then northwest to 32°46′48″ N, 117°14′40″ W. All coordinates are North American Datum 1983.

(b) *Effective dates.* This safety zone will be in effect from 6 a.m. (PST) to 12 p.m. (PST) on November 10, 2002. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted via VHF–FM Channel 16.

Dated: October 4, 2002.

S. P. Metruck,

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

[FR Doc. 02–27666 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–015]

RIN 2115–AA97

Security Zones; Protection of Tank Ships, Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the safety or security of tank ships in the navigable waters of Puget Sound and adjacent waters, Washington. This security zone will provide for the regulation of vessel traffic in the vicinity of tank ships in the navigable waters of the United States.

DATES: This temporary rule is effective from October 15, 2002 until April 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD 13–02–015 and are available for inspection or copying at Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT A. L. Praskovich, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard tank ships from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to tank ships from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for tank ships. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Background and Purpose

Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 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 Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations).

The Coast Guard, through this action, intends to assist tank ships by establishing a security zone to exclude persons and vessels from the immediate vicinity of all tank ships. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Rule

This rule, for safety and security concerns, controls vessel movement in a regulated area surrounding tank ships. For the purpose of this regulation, a tank ship means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges. All vessels within 500 yards of tank ship shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel (defined below), is allowed within 100 yards of a tank ship, unless authorized by the official patrol or tank ship master. Vessels requesting to pass within 100 yards of a tank ship shall contact the official patrol or tank ship master on VHF–FM channel 16 or 13. The official patrol or tank ship master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a tank ship in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing tank ships. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation restricts access to the regulated area, the affect of this regulation will not be significant because: (i) Individual tank ship security zones are limited in size; (ii) the official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will affect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of tank ships in the navigable waters of the United States.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual tank ship security zones are limited in size; (ii) the official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of tank ships and the Coast Guard's commitment to working with the Tribes, we have determined that tank ship security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this temporary rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD. As an emergency action, the Environmental Analysis, requisite regulatory consultations, and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary tank ship security zone, and will be available in the docket. This temporary rule ensures the safety and security of tank ships. All standard environmental measures remain in effect. The Categorical Exclusion Determination will be made available in the docket for inspection or copying 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From October 15, 2002, until April 15, 2003, temporary § 165.T13–011 is added to read as follows:

§ 165.T13–011 Security Zone Regulations; Tank Ship Protection Zone, Puget Sound and adjacent waters, Washington.

(a) The following definitions apply to this regulation:

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Navigation Rules means the Navigation Rules, International-Inland.

Official Patrol means those persons designated by the Captain of the Port to monitor a tank ship protection zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this Temporary Final Rule are designated as the Official Patrol.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Tank Ship means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

Tank Ship Protection Zone is a 500-yard regulated area of water surrounding tank ships that is necessary to provide for the safety or security of these vessels.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) This section applies to any vessel or person in the navigable waters of the United States east of 123 degrees, 30 minutes West Longitude. (Datum: NAD 1983.)

(c) A tank ship protection zone exists around tank ships at all times in the navigable waters of the United States, whether the tank ship is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within a tank ship protection zone.

(e) All vessels within a tank ship protection zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the official patrol or tank ship master. No vessel or person located in the navigable waters of the United States is allowed within 100 yards of a tank ship, unless authorized by the official patrol or tank ship master.

(f) To request authorization to operate within 100 yards of a tank ship, contact the official patrol or tank ship master on VHF–FM channel 16 or 13.

(g) When conditions permit, the official patrol or tank ship master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a tank ship in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of passing a tank ship; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored tank ship with minimal delay consistent with security.

(h) *Exemption.* Public vessels as defined in paragraph (a) above are

exempt from complying with this regulation.

(i) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this regulation. In the navigable waters of the United States, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effect control in the vicinity of a tank ship, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this regulation pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, State or local agencies in enforcing this rule.

Dated: October 15, 2002.

D. Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 02–27723 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7400–1]

Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The EPA is proposing to extend the expiration date from January 1, 2003 to January 1, 2006 for the interim authorization under the Resource Conservation and Recovery Act, of the Massachusetts program for regulating Cathode Ray Tubes (''CRTs''). Massachusetts was granted interim authorization to assume the responsibility under the Toxicity Characteristics Rule (''TC Rule'') for regulating CRTs, on November 15, 2000. That previously granted interim authorization is due to expire on January 1, 2003 and needs be extended for the reasons explained below. EPA is publishing this rule to authorize the extension without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this extension during the comment period, the decision to extend the interim authorization will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This extension of the interim authorization will become effective on December 30, 2002 and remain in effect until January 1, 2006 unless EPA receives adverse written comment by December 2, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this extended authorization will not take immediate effect.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Documents related to EPA's previous decision to grant interim authorization (regarding regulation of CRTs) and the materials which EPA used in now considering the extension (the ''Administrative Record'') are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

Pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, states which have been authorized to administer the Federal hazardous waste program under RCRA section 3006(b), 42 U.S.C. 6926(b), have a continuing obligation to update their programs to meet revised Federal requirements. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279. For example, States must revise their programs to regulate the additional wastes determined to be hazardous as a result of using the Toxicity Characteristics Leaching Procedure (''TCLP'') test adopted by the EPA on March 29, 1990, in the TC Rule. 55 FR 11798. The EPA may grant final authorization to a State revision if it is equivalent to, consistent with, and no less stringent than Federal RCRA requirements.

In the alternative, as provided by RCRA section 3006(g), 42 U.S.C. 6926(g), for updated Federal requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), such as the TC Rule, the EPA may grant interim (*i.e.*, temporary) authorization to a State revision so long as it is *substantially* equivalent to Federal RCRA requirements.

B. What Decisions Have We Made in This Rule?

1. Background

The TC Rule grants authority over wastes which first became classified as hazardous as a result of using the ''TCLP'' test, such as many CRTs. *See* 55 FR 11798, 11847–11849 (March 29, 1990). CRTs are the glass picture tubes found inside television and computer monitors. Because of their high lead content, CRTs generally fail the TCLP test. Thus, under the EPA's current regulations, CRTs generally become hazardous wastes when they are discarded (*e.g.*, when sent for disposal or reclamation rather than being reused). However, the EPA has recognized that certain widely generated wastes may pose lower risks during accumulation and transport than other hazardous wastes. Thus the EPA has listed certain wastes as Universal Wastes which are subject to reduced regulation and has allowed authorized States to add other appropriate wastes as Universal Wastes. *See* 40 CFR part 273.

On August 4, 2000, Massachusetts adopted regulations which revised its regulatory program as it relates to CRTs. The State adopted a three-part approach: (1) Intact CRTs being disposed are subject to full hazardous waste requirements (along with crushed or ground up CRTs); (2) intact CRTs that may still be reused (without reclamation) generally are considered commodities exempt from hazardous waste requirements; and, finally, (3) intact CRTs which will not be reused, but which instead will be crushed and recycled (*i.e.*, as spent materials being reclaimed), are subject to reduced

requirements which track some but not all of the EPA's Universal Waste Rule requirements. As explained in the **Federal Register** on November 15, 2000, 65 FR 68915, and further explained in a legal memorandum contained in the Administrative Record, dated January 21, 2000 entitled ''Massachusetts' Regulation of CRTs,'' the EPA determined that the State program was ''substantially equivalent'' to Federal RCRA requirements. Therefore, the EPA granted Massachusetts interim authorization to regulate CRTs under the TC Rule. The State program was determined to be only ''substantially'' rather than fully equivalent to the federal RCRA program because the maximum flexibility allowed under the federal program was to regulate hazardous CRTs being reclaimed as a Universal Waste, whereas Massachusetts regulates intact CRTs heading to reclamation less stringently in certain respects than does the Universal Waste Rule.

2. Today's Decision

There have been no changes in either the Federal or Massachusetts regulations applicable to CRTs since November 15, 2000. Therefore, the State program remains substantially equivalent (but not fully equivalent) to current Federal RCRA requirements, for the reasons previously stated. However, in line with the general deadline for the expiration of interim authorizations set in 40 CFR 271.24, the interim authorization of the Massachusetts CRT program is set to expire on January 1, 2003. Absent further EPA action, the authority to regulate the CRTs would revert to the EPA as of January 1, 2003, and full hazardous waste regulations would become applicable to many CRTs in Massachusetts.

Like Massachusetts, the EPA has recognized that regulating intact CRTs as a fully regulated hazardous waste can discourage recycling of the CRTs and, thus, be counter-productive. Therefore, it is environmentally important not to allow the interim authorization of the Massachusetts regulations to expire.

On June 12, 2002, the EPA proposed to adopt regulations to reduce RCRA regulatory requirements for CRTs. *See* 67 FR 40508. If the proposed rule is adopted, intact CRTs heading for reclamation will no longer be classified as solid or hazardous wastes. Thus, they will no longer need to be handled in accordance with either full hazardous waste or Universal Waste Rule requirements. Therefore, if and when the proposed rule is adopted, the Massachusetts CRT program will no longer be less stringent than the Federal program. It will be equivalent to the Federal program in exempting commodity CRTs from regulations while fully regulating CRTs being disposed, and will be more stringent than the Federal program in partially regulating intact CRTs being reclaimed and in fully regulating crushed or ground up CRTs even when they are recycled. However, the final EPA CRT rule is not expected to be issued until after January 1, 2003.

The EPA believes that extension of the interim authorization of the Massachusetts CRT program beyond the generally applicable deadline of January 1, 2003 is appropriate in the unusual circumstances presented. An extension to January 1, 2006 will enable the Massachusetts program to continue to operate pending the EPA's final decision on its own CRT Rule. This should give the EPA sufficient time to finalize its own CRT Rule. If the final EPA CRT Rule is the same as the proposed rule or otherwise remains at least as flexible as the Massachusetts CRT Rule, then the EPA should be able to later grant final authorization to the Massachusetts CRT Rule, as soon as the EPA CRT Rule is adopted. If the final EPA CRT Rule is more stringent than the Massachusetts CRT Rule, the EPA and State can address the resulting situation at that time. If the final EPA CRT Rule has not been issued by January 1, 2006, the EPA may consider a further extension of the interim authorization of the Massachusetts CRT Rule, but is making no decision on such a further extension at this time.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that for CRTs regulated under the TC Rule, a facility in Massachusetts subject to RCRA will have to continue to comply with the authorized State requirements instead of the Federal requirements in order to comply with RCRA. The Commonwealth of Massachusetts has enforcement responsibilities under its State hazardous and solid waste programs for violations of such programs, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the State regulations for which interim authorization to Massachusetts is being extended by today's action are already in effect under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What Has Massachusetts Previously Been Authorized for?

Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344) to implement its base hazardous waste management program. EPA granted authorization for changes to their program on September 30, 1998, effective November 30, 1998 (63 FR 52180) and October 12, 1999, effective that date (64 FR 55153), in addition to the previously discussed November 15, 2000 authorization of the Massachusetts CRT Rule (65 FR 68915).

G. What Changes Are We Authorizing in Today's Action?

The Massachusetts regulations authorized by today's action are the same as those listed in the chart set forth in the **Federal Register** document dated November 15, 2000 (65 FR 68915, 68918). Today's action simply extends the interim authorization previously granted from January 1, 2003 to January 1, 2006.

H. Where Are the Revised State Rules Different From the Federal Rules?

The differences between the State and Federal regulations with respect to CRTs are discussed in the November 15, 2000 **Federal Register** document. Notwithstanding these differences, the EPA believes that the State regulations are substantially equivalent to the Federal regulations and, thus, the State

continues to qualify to have interim authorization. During the interim authorization period, for CRTs regulated under the TC Rule, these State regulations will operate in lieu of the Federal hazardous waste regulations.

I. Who Handles Permits After This Authorization Takes Effect?

Massachusetts will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Massachusetts is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Massachusetts?

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Massachusetts' Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying the enumerated revisions to the Massachusetts program. We reserve the amendment of 40 CFR part 272, subpart W for the codification of Massachusetts' program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 17, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–27341 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2612; MM Docket No. 00–31; RM–9815, RM–10014, RM–10095]

Radio Broadcasting Services; Nogales, Vail and Patagonia, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses an Application for Review filed by Big Broadcast of Arizona, LLC directed to the *Report and Order* in this proceeding. *See* 65 FR 11540, published March 3, 2000. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–31, adopted October 9, 2002, and released October 18, 2002.

The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27693 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2602; MB Docket No. 02–209, RM–10512; MB Docket No. 02–210, RM–10510; MB Docket No. 02–211, RM–10511]

Radio Broadcasting Services; Greenwood, MS; Hyannis, NE; and Wall, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants three proposals that allot new channels to Greenwood, Mississippi; Hyannis, Nebraska; and Wall, South Dakota. The Audio Division, at the request of David P. Garland, allots Channel 277A at Greenwood, Mississippi, as the community's fourth local FM transmission service. *See* 67 FR 52924, August 14, 2002. Channel 277A can be allotted to Greenwood in compliance with the Commission's minimum distance separation requirements with a site restriction 10.1 kilometers (6.3 miles) east of the community to avoid a short-spacing to an application site of Station KZYQ, Channel 278C2, Lake Village, Arkansas. The coordinates for Channel 277A at Greenwood are 33–32–19 North Latitude and 90–04–27 West Longitude. Filing windows for Channel 277A at Greenwood, Mississippi; Channel 250C1 at Hyannis, Nebraska; and Channel 288C at Wall South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* Supplementary Information, *infra.*

DATES: Effective December 2, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: David P. Garland, 1110 Hackney Street, Houston, Texas, 77023; John M. Pelkey, Garvey, Schubert & Barer, 5th Floor, 1000 Potomac Street, NW., Washington, DC 20007 (Counsel for Grant County Broadcasters and Wall Radio Broadcasters).

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–209, 02–210, 02–211, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division, at the request of Grant County Broadcasters, allots Channel 250C1 at Hyannis, Nebraska, as the community's first local FM transmission service. *See* 67 FR 52924, August 14, 2002. Channel 250C1 can be allotted to Hyannis in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 250C1 at Hyannis are 42–00–02 North Latitude and 101–45–41 West Longitude.

The Audio Division, at the request of Wall Radio Broadcasters, allots Channel 288C at Wall, South Dakota, as the community's first local FM transmission service. *See* 67 FR 52924, August 14, 2002. Channel 288C can be allotted to Wall in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288C at Wall are 43–59–47 North Latitude and 102–13–07 West Longitude.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 277A at Greenwood.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Hyannis, Channel 250C1.

4. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Wall, Channel 288C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27691 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2720; MM Docket No. 01–123, RM–10139, RM–10387; MM Docket No. 01–177, RM–10196, RM–10388 and RM–10389]

Radio Broadcasting Services; Darien, Rincon, Screven and Statesboro, GA; Palatka and Middleburg, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making* in MM Docket No. 01–123, 66 FR 33942 (June 26, 2001) and a *Notice of Proposed Rule Making* in MM Docket No. 01–177, 66 FR 42622 (August 14, 2001), this document consolidates MM Docket Nos. 01–123 and 01–177; upgrades Channel 261C2, Station WMCD(FM), Statesboro, Georgia, to Channel 261C1 and changes

Station WMCD's community of license from Statesboro to Rincon, Georgia; downgrades Channel 260C, Station WGNE–FM, Palatka, Florida, to Channel 260C0 and changes WGNE–FM's community of license from Palatka to Middleburg, Florida; and allows the provision of first local aural transmission services to Rincon, Georgia, and Middleburg, Florida. The coordinates for Channel 261C1 at Rincon, Georgia, are 32–08–35 North Latitude and 81–42–14 West Longitude. The coordinates for Channel C0 at Middleburg, Florida are 29–59–40 North Latitude and 81–19–39 West Longitude.

DATES: Effective December 2, 2002.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket Nos. 01–123 and 01–177, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863-2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Middleburg, Channel 260C0 and removing Palatka, Channel 260C.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Rincon, Channel 261C1 and removing Channel 261C2 at Statesboro.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27695 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1509 and 1552

[FRL–7402–8]

Acquisition Regulation: Contractor Performance Evaluations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation to revise its policy and procedures regarding the evaluation of contractor performance. This action is necessary because EPA's current regulation eliminates the use of the National Institutes of Health (NIH) Contractor Performance System to record contractor performance histories for construction acquisitions. This revision will allow EPA contracting officers to utilize the NIH system for construction type acquisitions in lieu of the Federal Acquisition Regulation prescribed Standard Form 1420, Performance Evaluation (Construction Contracts). The NIH obtained approval from the Civilian Agency Acquisition Council regarding the use of its construction module in lieu of Standard Form 1420.

DATES: This final rule becomes effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–4368.

SUPPLEMENTARY INFORMATION: Information on the regulation of contractor performance evaluations is organized as follows:

I. Background

This final rule amends the Environmental Protection Agency Acquisition Regulation Subpart 1509.170 and 1552.209–76 to allow EPA contracting officers to utilize the construction module in the National Institutes of Health's Contractor Performance System. EPA currently uses the services module in the NIH system to evaluate contractor performances of both large and small businesses who are awarded EPA contracts in excess of $100,000.

A proposed rule was published in the **Federal Register** (67 FR 7657–7660) on February 20, 2002, providing for a 30 day comment period. There were no comments received regarding the proposed rule.

II. Final Action

This final rule will allow EPA contracting officers to use either the services module or the construction module in the National Institutes of Health's Contractor Performance System, depending on the type of acquisition.

III. Statutory and Executive Order Reviews

Executive Order 12866

This final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

Paperwork Reduction Act

The Paperwork Reduction Act applies to this final rule, and the information collection request has been evaluated by the Office of Management and Budget. The Office of Information and Regulatory Affairs within the Office of Management and Budget has issued OMB Clearance No. 9000–0142 for the collection of contractor performance information. Comments regarding Paperwork Reduction Act concerns should be sent to the Office of Management and Budget (Attn: EPA Desk Officer).

Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et Seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities,

I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule requires no reporting or record-keeping by small or large business contractors. Rather, it provides EPA contractors with a formal opportunity, generally once a year per contract, to review and comment on their specific performance evaluations as conducted by the cognizant EPA contracting officer. Therefore, this final rule will have no adverse or significant economic impact on small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13045

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

This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

Executive Order 13132

Executive Order 13132 entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' as defined in the Executive Order include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

National Technology Transfer and Advancement Act of 1995

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

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

Executive Order 13211 (Energy Effects)

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Submission to Congress and the General Accounting Office

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

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

List of Subjects in 48 CFR Parts 1509 and 1552.

Government procurement.

Dated: October 18, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1509 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

PART 1509—[AMENDED]

2. Section 1509.170–3 is amended by revising paragraphs (a), (c), and adding paragraph (d) to read as follows:

1509.170–3 Applicability.

(a) This subpart applies to all EPA acquisitions in excess of $100,000, except for architect-engineer acquisitions, acquisitions awarded under the Federal Acquisition Regulation (FAR) Subpart 8.6, Acquisitions from Federal Prison Industries, Incorporated, FAR Subpart 8.7, Acquisitions from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled, and FAR 13.5, Test Program for Certain Commercial Items. FAR 36.604 provides detailed instructions for architect-engineer contractor performance evaluations.

* * * * *

(c) EPA Form 1900–26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900–27, Project Officer's Evaluation of Contractor Performance, applies to all performance evaluations completed prior to May 26, 1999. Thereafter, EPA Forms 1900–26 and 1900–27 are obsolete, and contracting officers shall complete all contractor performance evaluations by use of the National Institutes of Health's Contractor Performance System in accordance with EPAAR paragraph (a) of this section.

(d) Construction acquisitions shall be completed by use of the NIH construction module. Performance evaluations for construction acquisitions shall be completed in accordance with EPAAR 1509.170–5.

3. Section 1509.170–4 is amended by revising the last sentence in paragraph (f) to read as follows:

1509.170–4 Definitions.

* * * * *

(f) * * * Performance categories include quality, cost control, timeliness of performance, business relations, compliance with labor standards, compliance with safety standards, and meeting Small Disadvantaged Business subcontracting requirements.

4. Section 1509.170–5 is amended by revising paragraph (b) to read as follows:

1509.170–5 Policy.

* * * * *

(b) For service type acquisitions, contracting officers shall use the National Institutes of Health (NIH) Contractor Performance System to record evaluations for all contract performance periods expiring after May 26, 1999. For construction type acquisitions, contracting officers shall use the NIH system to record evaluations for all contract performance periods expiring after December 2, 2002.

* * * * *

5. Section 1509.170–8 is amended by revising paragraph (b) to read as follows:

1509.170–8 Contractor Performance Report.

* * * * *

(b) The performance categories and ratings used in the evaluation of contractor performance are described in the clause at 1552.209–76. The NIH system provides instructions to assist contracting officers and project officers with completing evaluations.

PART 1552—[AMENDED]

6. Section 1552.209–76 is amended by revising the undesignated text between the section heading and paragraph (a), revising paragraphs (a)(2), (b)(2) and (b)(4) to read as follows:

1552.209–76 Contractor Performance Evaluations.

As prescribed in section 1509.170–1, insert the following clause in all applicable solicitations and contracts.

Contractor Performance Evaluations (October 2002)

The contracting officer shall complete a Contractor Performance Report (Report) within ninety (90) business days after the end of each 12 months of contract performance (interim Report) or after the last 12 months (or less) of contract performance (final Report) in accordance with EPAAR 1509.170–5. The contractor shall be evaluated based on the following ratings: 0 = Unsatisfactory, 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent, 5 = Outstanding, N/A = Not Applicable.

The contractor may be evaluated based on the following performance categories: Quality, Cost Control, Timeliness of Performance, Business Relations, Compliance with Labor Standards, Compliance with Safety Standards, and Meeting Small Disadvantaged Business Subcontracting Requirements.

(a) * * *

(2) Evaluate contractor performance and assign a rating for quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories (including a narrative for each rating);

* * * * *

(b) * * *

(2) Assign a rating for the business relations and meeting small disadvantaged business subcontracting requirements performance categories (including a narrative for each rating).

* * * * *

(4) Provide any additional information concerning the quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories if deemed appropriate for the evaluation or future evaluations (if any), and provide any information regarding subcontracts, key personnel, and customer satisfaction; and

* * * * *

[FR Doc. 02–27617 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Listing the Sacramento Splittail as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the

final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period, and will be fully considered in the final rule. We are reopening the comment period to solicit comments on the revised statistical analysis we have done to examine the available splittail abundance data, as described in our March 21, 2002 document, which also reopened the comment period to seek comments on this analysis. The statistical analyses published on January 12, 2001, May 8, 2001, and August 17, 2001 have been superseded by the March 21, 2002 analysis, on which we are now seeking additional comments.

In addition, we invite any additional comments on the status of the species and the factors affecting the species, as described in our prior documents of January 12, 2001, May 8, 2001, August 17, 2001, and March 21, 2002. Lastly, we point out that our March 21, 2002, document stated a comment period extending to October 15, 2002; this was revised to May 20, 2002, in a correction document published April 1, 2002.

DATES: We will accept public comments until December 2, 2002.

ADDRESSES: *Comment Submission:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

3. You may send comments by electronic mail (e-mail) to: *fw1splittail@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, Susan Moore, at the above address (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (hereafter splittail) represents the only extant species in its genus in North America. For a detailed description of the species, see the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes (Service 1996), references within that plan, and Moyle *et al.* (2001 in prep.).

Splittail are endemic to certain waterways in California's Central Valley, where they were once widely distributed (Moyle 1976, Moyle 2002). Splittail presently occur in Suisun Bay, Suisun Marsh, the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary), the Estuary's tributaries (primarily the Sacramento and San Joaquin rivers), the Cosumnes River, the Napa River and Marsh, and the Petaluma River and Marsh. The splittail no longer occurs throughout a significant portion of its former range.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the splittail was listed as a threatened species on February 8, 1999 (64 FR 5963). In this previous listing determination, we found that changes in water flows and water quality resulting from export of water from the Sacramento and San Joaquin rivers, periodic prolonged drought, loss of shallow water habitat, and the effects of agricultural and industrial pollutants were significant factors in the splittail's decline.

Subsequent to the publication of the final rule, plaintiffs in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* commenced action in Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C 551 *et seq.*). We, as directed by the court, and pursuant to the Act, provided notice of the opening of a comment period regarding the threatened status for the splittail, from January 12, 2001, to February 12, 2001 (66 FR 2828). In addition, we reopened the comment period on three additional occasions; from May 8, 2001, to June 7, 2001 (66 FR 23181); from August 17, 2001, to October 1, 2001 (66 FR 43145); and from March 21, 2002, to October 15, 2002 (67 FR 13095). The October 15, 2002, comment period closing date stated in 67 FR 13095 was corrected to May 20, 2002, via a correction document published on April 1, 2002 (67 FR 15337).

We are now reopening the comment period to solicit comments on the factors affecting the splittail (as first solicited in 66 FR 2828) and on the revised statistical analysis used to analyze the abundance data available for splittail, and to seek public comment on the status of the species (as solicited in 67 FR 13095). Upon the close of this comment period, we will make our determination whether the splittail warrants the continued protection of the Act.

The approach currently used by us to analyze the best scientifically and commercially available splittail abundance data differs from methods employed previously. In the February 8, 1999, final rule and the January 12, 2001, and May 8, 2001, reopenings of the comment periods, we relied primarily on the unstratified Mann-Whitney U-test approach utilized by Meng and Moyle (1995), first published in the *Transactions of the American Fisheries Society*. See 66 FR 2828 for a complete description of the Meng and Moyle (1995) method.

In the August 17, 2001, reopening of the comment period, we employed permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests to analyze data derived from the Meng and Moyle (1995), Sommer *et al.* (1997), and California Department of Fish and Game (CDFG) methodologies. We also employed a polynomial regression model and a crude exponential decay analysis in the August 17, 2001, comment period. See 66 FR 2828 for a complete description of the permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests method.

In the March 21, 2002, reopening, we employed a statistical analysis of an abundance index and Multiple Linear Regression (MLR) model jointly developed and submitted by the CDFG (Rempel 2001) and the United States Bureau of Reclamation (USBR) (Michny 2001). The model, hereafter referred to as the CDFG/USBR MLR model and described in detail in 67 FR 13095, was used to analyze data from: (1) CDFG's Fall Midwater Trawl (Fall MWT) survey; (2) CDFG's San Francisco Bay Midwater Trawl (Bay Study MW); (3) CDFG's San Francisco Bay Otter Trawl (Bay Study OT); (4) the University of California (UC) Davis Suisun Marsh Otter Trawl (Suisun Marsh OT); (5) our Chipps Island Trawl survey (Chipps Is. Trawl); (6) fish salvage operations (which repatriate fish taken from water intake screens) at the CVP Tracy Fish Collection Facility (CVP); and (7) fish salvage at the State Water Project (SWP) Skinner Delta Fish Protective Facility in the south Delta. See Moyle *et al.* 2001 in prep.; Meng and Moyle 1995; and Sommer *et al.* 1997, for descriptions of surveys.

The CDFG/USBR MLR model's four highest, statistically significant (at traditional levels) probabilities of a

nonzero downward splittail population trend are exhibited by the Suisun Marsh survey (Age-0 and adult) and in the data collected via fish salvage operations at the SWP (Age-1, and Age-2 and greater). The decline evident in the Chipps Island Trawl (Age-2 and greater) is nearly-statistically significant at traditional levels (94.3 percent probability). Two additional probabilities of a nonzero downward splittail population trend are evident at the 80 percent probability level; Chipps Island Trawl (Age-1) and SWP salvage (Age-0). *See* 67 FR 13095 for a complete description of the CDFG/USBR MLR model and our statistical analysis of its results.

We believe that all of the abundance monitoring data for splittail have methodological weaknesses of one sort or another; none of the surveys were designed specifically to rigorously estimate splittail population numbers. However, we believe that these existing data sets constitute the best available scientific information for the species.

Public Comments Solicited

We will accept written comments during this reopened comment period, and comments should be submitted to the Sacramento Fish and Wildlife Office as found in the **ADDRESSES** section.

You may send comments by electronic mail (e-mail) to: fw1splittail@fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN AH73]'' and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

Author

The primary author of this notice is Jason Douglas (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 21, 2002.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27648 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 67, No. 211
Thursday, October 31, 2002

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–78]

Robert H. Leyse; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Robert H. Leyse. The petition has been docketed by the NRC and has been assigned Docket No. PRM–50–78. The petitioner is requesting that the NRC regulations that govern domestic licensing of production and utilization facilities be amended to address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants. The petitioner believes that the fouling of heat transfer surfaces is not adequately considered in the licensing and compliance inspections, testing programs, and computer codes for nuclear power facilities.

DATES: Submit comments by December 16, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page *(http://ruleforum.llnl.gov).* At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated September 2, 2002, submitted by Robert H. Leyse (petitioner). The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–52–78. The NRC is soliciting public comment on the petition for rulemaking.

The Petitioner's Request

The petitioner is requesting that the regulations in 10 CFR part 50 be amended to address the impact of fouling on the performance of heat transfer surfaces throughout nuclear power plants. Specifically, the petitioner requested that the NRC amend 10 CFR part 50 to include fouling considerations in NRC-funded test programs such as the Rod Bundle Heat Transfer (RHBT) at Penn State University and the RELAP and TRAC series NRC computer codes. The petitioner believes that the fouling of heat transfer surfaces is not adequately considered in the licensing and compliance inspections of nuclear power plants.

Justification for the Petition

The petitioner states that the NRC must produce a complete inventory of all significant heat transfer surfaces because regulations are needed to address the impact of fouling on the performance of heat transfer surfaces in all licensed nuclear power plants. The petitioner asserts that NRC regulations must require reporting of the performance of these surfaces including records of degradation, cleaning procedures, and effectiveness, and must address mechanical degradation of heat transfer assemblies, especially in fuel assemblies. The petitioner also states that the amended regulations must require detailed reporting that must be publicly available. The petitioner believes that the current regulations do not address the significance of severe fouling of nuclear fuel elements and that NRC licensing bases and technical specifications do not limit the amount of fouling of fuel elements.

The petitioner cites an Advisory Committee on Reactor Safeguards (ACRS) Subcommittee meeting transcript dated May 31, 2002, stating that the fouling of fuel elements in some cases is sufficient to induce significant oxidation of the fuel cladding that has led to ''a debate over (whether) the 17 percent includes the prior oxidation or it's just the oxidation during the ramp-up.'' Another ACRS Subcommittee transcript dated April 24, 1998, led the petitioner to believe that the fouling issue is not being adequately considered, stating that after axial offset anomalies were traced to fouling of nuclear fuel elements, the ACRS was told this phenomena is ''a(n) annoyance. They affect economics, but they are not safety issues.''

The petitioner states that severe fouling of nuclear fuel elements also leads to axial growth of the fuel rods beyond design limits because the operating temperatures of fuel rods become greater than allowed for in design. According to the petitioner, the fuel rods may expand sufficiently along their length to become restrained from further axial growth by the fuel assembly end fittings causing the rods to bow and make contact with adjacent rods and control rod guide tubes.

The petitioner cites another instance when one nuclear power plant continued to operate at power, the need for repeated cleaning of an air cooling

heat exchanger was not recognized as a key indicator of a substantial leak in the primary reactor system. Because this plant's operation remained within the technical specifications, there was no basis for plant operators to perform investigations. The petitioner believes this instance calls for the regulations to address the need for investigating the grossly off-normal performance of this heat exchange equipment. The petitioner states that in several instances, the fouling of steam generator tubes has reduced heat transfer effectiveness enough to force operation at reduced secondary side pressures in order to maintain heat transfer rates. The petitioner believes that this fouling is not only an operating annoyance, but will likely impact safety issues.

The petitioner has concluded that fouling of main condenser heat transfer surfaces has led to degradation of heat transfer effectiveness and that these fouling deposits have occasionally been released into the coolant stream, contributing to the fouling of fuel elements.

The petitioner also has concerns with test programs and states that during the past several decades, the NRC has funded over one billion dollars of heat transfer test programs that have not included any allowance for the fouling of heat transfer surfaces that occurs during operation of nuclear power plants. The petitioner states that these test programs must be thoroughly studied and that allowances must be made for a range of fouling of the heat transfer surfaces. The petitioner believes it is very likely that it will not be possible to produce reliable allowances for a range of degrees of fouling and states that the results of the prior test programs such as FLECHT, LOFT, Semiscale, and others must not be applied to the production of computer codes for reactor heat transfer analyses.

The petitioner also notes that the NRC is currently spending millions of dollars on heat transfer testing at facilities such as the RHBT at Penn State University and believes that ''these programs must be realigned to cover the cases of several degrees of fouling.''

The petitioner notes that the NRC has also funded several hundred million dollars of computer codes related to heat transfer processes in nuclear power reactors. The petitioner states that these codes (TRAC, RELAP, and others) have not considered the effects of fouling on heat transfer surfaces at nuclear power facilities and must not be applied to the licensing of nuclear power plants until ''reliable allowances for a range of degrees of fouling are incorporated in the codes.''

The petitioner states that amended regulations will illustrate if conditions similar to those already reported in certain Licensee Event Reports (LERs) will constitute license violations and cites LER 50–458/99–016–00 as a possible example.

The Petitioner's Suggested Codified Text

The petitioner did not provide proposed changes to codified text in presenting issues in the petition that address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants.

The Petitioner's Conclusions

The petitioner has concluded that the increased attention to detail in plant design, analysis, and operations that will be effected by the amended regulations will enhance operating effectiveness and safety, discourage incomplete and misleading reporting to regulatory authorities, and reduce opportunities for sabotage by insiders. The petitioner has also concluded that the increased reporting requirements with respect to fouling of heat transfer surfaces at nuclear power facilities will provide improved information to professional risk analysts who advise financial management organizations, to individual investors, and to State agencies that oversee the sale and acquisition of nuclear power plants by utility holding companies that operate within their jurisdiction.

Dated at Rockville, Maryland, this 24th day of October, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27700 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 296–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Office of the Pardon Attorney (OPA), proposes to exempt the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001) system of records from subsections (c)(3), (c)(4), (d)(1), (d) (2), (d)(3), (d)(4), and (e)(5) of the Privacy Act, 5 U.S.C. 552a. Information in this system relates to the investigation and evaluation of applicants for executive clemency and case-related correspondence regarding such applicants and the clemency process. The exemptions are necessary to avoid interference with clemency investigations and decision-making, when such interference could impair the Department of Justice's ability to provide candid recommendations to the President for his ultimate decisions on clemency matters, and to prevent unwarranted invasions of the personal privacy of third parties.

DATES: Submit any comments by December 2, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001).

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant impact on a substantial number of small entities.''

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a, and delegated to me by Attorney General Order No. 793–78, it is proposed to delete the current language of 28 CFR 16.79 and substitute the following:

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.79 is revised to read as follows:

§ 16.79 Exemption of Pardon Attorney Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5): Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001). These exemptions apply only to the extent that

information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because:

(i) The purpose of the creation and maintenance of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001) is to enable the Justice Department to prepare reports and recommendations to the President for his ultimate decisions on clemency matters, which are committed to exclusive discretion of the President pursuant to Article II, Section 2, Clause 1 of the Constitution.

(ii) Release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the requester to obtain valuable information concerning the nature and scope of a clemency investigation, invade the right of candid and confidential communications among officials concerned with making recommendations to the President in clemency matters, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) From subsection (c)(4) because the exemption from subsections (d)(1), (d)(2), (d)(3), and (d)(4) will make notification of disputes inapplicable.

(3) From subsections (d)(1), (d)(2), (d)(3), and (d)(4) is justified for the reasons stated in paragraph (1) above.

(4) From subsection (e)(5) is justified for the reasons stated in paragraph (1) above.

Dated: October 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–122]

RIN 2115–AE46

Special Local Regulations; Winterfest Boat Parade, Broward County, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the annual Winterfest Boat Parade held on the first Saturday falling between December 13 and 19, inclusive, each year in Fort Lauderdale, Florida. This proposed rule would create four separate regulated areas and would restrict operations of non-participant vessels in the regulated areas. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before December 2, 2002.

ADDRESSES: You may mail comments and related material to Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139. Coast Guard Group Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Victor Sorensen or BM1 Daniel Vaughn at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–122], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Coast Guard at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate making this rule effective less than 30 days after the final rule is published in the **Federal Register** due to the event date in mid-December and to allow the public to comment on this proposed rule.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Winterfest Boat Parade is a nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1500 spectator craft typically view the parade. The parade would form in the staging area at the Port Everglades turning basin and on a portion of the ICW south of the turning basin and would proceed north on the ICW to Lake Santa Barbara where the parade would disband.

These regulations would create regulated areas for the staging area, judging area, viewing area, and parade route. Non-participant vessels would be prohibited from entering or anchoring in the staging area. Further, no vessel would be allowed to enter or anchor in the viewing and judging areas. During the parade transit, these regulations would prohibit non-participant vessels from approaching within 175 yards ahead of the lead vessel and 175 yards astern of the last participant vessel in the parade, and within 15 yards on either side of the outboard parade vessels, unless authorized by the Coast Guard Patrol Commander. The event sponsor would have watercraft in the area to guide mariners around the regulated areas.

The staging area of this regulation overlaps with existing security zones established by the Coast Guard Captain of the Port of Miami under 33 CFR 165.T07–054 (67 FR 46389, July 15, 2002). These security zones are activated when passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquified hazardous gas as defined in 33 CFR parts 120, 126, and 127 respectively, enter or moor in Port Everglades. These security zones remain in effect during this event and no person or vessel may enter the security zones without the permission of the Coast Guard Patrol Commander.

Discussion of Rule

The Coast Guard proposes to establish four regulated areas for this event: a staging area, a judging area, a viewing

area, and a parade route. The staging area consists of all waters of the Port Everglades turning basin, including the North and South extensions, all waters of the Bar Cut west of a line from position 26°05.668′ N, 080°06.491′ W, to position 26°05.557′ N, 080°06.491′ W, and all waters of the ICW, bank to bank, from Dania Sound Light 35 (LLNR 47575) to the Port Everglades turning basin.

The parade route consists of the Intracoastal Waterway, bank to bank, from a line drawn across the ICW at the 17th Street Causeway Bridge between position 26°06.098′ N, 080°07.179′ W and position 26°06.092′ N, 080°07.085′ W, to Pompano Beach Daybeacon 74 (LLNR 47230). The viewing area consists of all waters of the ICW east of the centerline of the charted channel from the Sunrise Boulevard Bridge (26°08.281′ N, 080°06.482′ W) past Hugh Taylor Birch State Park to position 26°09.0′ N, 080°06.3′ W at the north end of Hugh Taylor Birch Park. The judging area consists of an area of the ICW, bank to bank, from a point on the northwest side of the 17th Street Causeway Bridge in position 26°06.098′ N, 080°07.179′ W, north to position 26°06.131′ N, 080°07.19′ W, then east to position 26°06.131′ N, 080°07.10′ W, then back south to position 26°06.092′ N, 080°07.085′ W at the northeast side of the 17th Street Causeway Bridge.

Non-participant vessels are prohibited from entering or anchoring in the staging area, viewing area, and judging area, unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may allow vessels to enter the staging area when the last participant vessel has departed the staging area. The Coast Guard Patrol Commander would notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157. MHz) if vessels are allowed to enter the staging area.

During the parade transit, non-participant vessels are prohibited from approaching within 175 yards ahead of the lead vessel or 175 yards astern of the last participating vessel in the parade, and within 15 yards either side of the parade unless authorized by the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposed 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 Transportation (DOT)(44 FR 11040, February 26, l979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule would only be in effect for 7 hours each year and the Coast Guard Patrol Commander may allow vessels to enter portions of the regulated areas on a case-by-case basis.

Small Entities

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

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the regulated areas from 4 p.m. to 11 p.m. on the first Saturday falling between December 13 and 19, inclusive, each year. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the rule would only be in effect for 7 hours each year and the Coast Guard Patrol Commander may allow vessels to enter portions of the regulated areas on a case-by-case basis.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Coast Guard at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT** for information on understanding and participating in this rulemaking.

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that Order.

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 regulatory actions not specifically required by law. 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. Although this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed rule under Executive Order 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Environment

The Coast Guard has considered the environmental impact of this action and has determined that pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M164751D, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Add § 100.735 to read as follows:

§ 100.735 Winterfest Boat Parade, Broward County, Fort Lauderdale, Florida

(a) *Regulated areas.* (1) *Staging area.* The staging area consists of all waters of the Port Everglades turning basin, including the North and South extensions, all waters of the Bar Cut west of a line from position 26°05.668′ N, 080°06.491′ W, to position 26°05.557′ N, 080°06.491′ W, and all waters of the ICW, bank to bank, from Dania Sound Light 35 (LLNR 47575) to the Port Everglades turning basin.

(2) *Parade route.* The parade route consists of the Intracoastal Waterway, bank to bank, from a line drawn across the ICW at the 17th Street Causeway Bridge between position 26°06.098′ N, 080°07.179′ W and position 26°06.092′ N, 080°07.085′ W, to Pompano Beach Daybeacon 74 (LLNR 47230).

(3) *Viewing area.* The viewing area consists of all waters of the ICW east of the centerline of the charted channel from the Sunrise Boulevard Bridge (26°08.281′ N, 080°06.482′ W) past Hugh Taylor Birch State Park to position 26°09.0′ N, 080°06.3′ W at the north end of Hugh Taylor Birch State Park.

(4) *Judging area.* The judging area consists of an area of the ICW, bank to bank, from a point on the northwest side of the 17th Street Causeway Bridge in position 26°06.098′ N, 080°07.179′ W, north to position 26°06.131′ N, 080°07.19’ W, then east to position 26°06.131′ N, 080°07.10′ W, then back south to position 26°06.092′ N, 080°07.085′ W at the northeast side of the 17th Street Causeway Bridge.

(b) *Special local regulations.* (1) *Staging area.* Non-participant vessels are prohibited from entering or anchoring in the staging area, unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may allow vessels to enter the staging area when the last participant vessel has departed the staging area. The Coast Guard Patrol Commander will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157. MHz) if vessels are allowed to enter the staging area.

(2) *Parade route.* During the parade transit, non-participant vessels are prohibited from approaching within 175 yards ahead of the lead vessel and 175 yards astern of the last participating vessel in the parade, and within 15 yards either side of the parade unless authorized by the Coast Guard Patrol Commander.

(3) *Viewing and judging areas.* Vessels are prohibited from entering or anchoring in the viewing and judging areas.

(4) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida and is also the designated representative of the Captain of the Port of Miami for purposes of enforcing security zones in Port Everglades during this event.

(c) *Dates.* This section is effective from 4 p.m. until 11 p.m. annually, on the first Saturday falling between December 13 and 19, inclusive.

Dated: October 23, 2002.

James S. Carmichael,

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

[FR Doc. 02–27665 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7399–9]

Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to extend the expiration date from January 1, 2003, to January 1, 2006, for the interim authorization under the Resource Conservation and Recovery Act, of the Massachusetts program for regulating Cathode Ray Tubes (''CRTs''). Massachusetts was granted interim authorization to assume the responsibility under the Toxicity Characteristics Rule (''TC Rule'') for regulating CRTs on November 15, 2000. That previously granted interim authorization is due to expire on January 1, 2003, and needs be extended. Elsewhere in today's **Federal Register**, EPA is publishing a rule to authorize the extension without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this extension during the comment period, the decision to extend the interim authorization will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and this separate document in this proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: Send your written comments by December 2, 2002.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Documents related to EPA's previous decision to grant interim authorization (regarding regulation of CRTs) and the materials which EPA used in now considering the extension (the ''Administrative Record'') are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 10

a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: October 17, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–27342 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules regarding the establishment of passenger vessel financial responsibility under sections 2 (Casualty) and 3 (Performance) of Pub. L. 89–777. The amendments would: eliminate the current ceiling on required Performance coverage; adjust the amount of coverage required by providing for consideration of the obligations of credit card issuers; provide for the use of Alternative Dispute Resolution (''ADR''), including the Commission's ADR program, in resolving passenger performance claims; revise the application form; and make a number of technical adjustments to the Performance and Casualty rules.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than January 8, 2003. As the Commission continues to experience some difficulty with mail delivery, commenters are encouraged to use e-mail, courier or express delivery services.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001. E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing; 202–523–5787; E-mail: *sandrak@fmc.gov;* or

Ronald D. Murphy, Commission Dispute Resolution Specialist and Deputy Director, Bureau of Consumer Complaints and Licensing; 202–523–5787; E-mail: *ronaldm@fmc.gov;* or

David R. Miles, Acting General Counsel, 202–523–5740; E-mail: *davidm@fmc.gov;* Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Section 3 of Public Law 89–777 (''section 3'') [1], 46 U.S.C. app. 817e, requires passenger vessel operators (''PVOs'') [2] to establish their financial responsibility to indemnify passengers for nonperformance of transportation. Section 2 of Public Law 89–777 (''section 2''), 46 U.S.C. app. 817d, requires owners and charterers of vessels with berth or stateroom accommodations for fifty or more passengers, and embarking passengers at U.S. ports, to establish financial responsibility to meet liability for death or injury to passengers or other persons on voyages to and from U.S. ports.

Effective August 5, 2002, the Commission amended its section 3 implementing regulations at 46 CFR part 540, subpart A, to eliminate self-insurance as a means of evidencing financial responsibility, to limit those entities acceptable as a guarantor, and to eliminate certain sliding scale provisions as to the amount of coverage required, 67 FR 44774 (July 5, 2002). A number of comments received in that rulemaking proceeding addressed concerns outside the scope of the proceeding. In particular, several commenters suggested that the current $15 million ceiling on the amount of the unearned passenger revenue (''UPR'') [3] required to be covered be substantially raised or eliminated completely. Some who advocated lifting the ceiling were concerned about an apparent competitive advantage to larger vessel operators required to cover only a fraction of their total UPR, while smaller operators with less than $15 million UPR must cover all of their UPR. One of the larger operators suggested that coverage requirements adjust upwards as UPR increases, in order to remedy the increasing shortfall in coverage as the larger fleets continue to increase in size. Partially in response to those comments, and in light of industry circumstances more fully described herein, the Commission has reviewed its rules and has determined that a number of changes should be made, including eliminating the ceiling.

The Commission also proposes minor amendments to its section 2 implementing regulations for casualty coverage, 46 CFR part 540, subpart B. Those changes would eliminate references to escrow agreements and make other technical changes.

State of the Industry

The current $15 million ceiling set forth at 46 CFR 540.9(j) has been in existence since 1991, when it was raised from $10 million.[4] In 1994, the Commission proposed to remove the $15 million ceiling, but following receipt of comments, the Commission opted to revise its proposal by imposing a sliding scale requirement that would increase the amount of coverage required for those cruise lines exceeding $15 million in unearned passenger revenues, without requiring coverage of the total amount of UPR. Docket No. 94–06, *Financial Responsibility Requirements for Nonperformance of Transportation;* Proposed Rule, 59 FR 15149 (March 31, 1994); Further Proposed Rule, 61 FR 33059 (June 26, 1996). That proceeding was discontinued earlier this year, without producing changes to the ceiling. *Id.,* Proceeding Discontinued, 67 FR 19535 (April 22, 2002).

Part of the reason the Commission stepped back from its prior efforts to require total coverage protection was the

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which embarks passengers at U.S. ports.

[3] As currently defined, UPR means ''passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.'' 46 CFR 540.2(i).

[4] The UPR coverage ceiling initially was set in 1967 at $5 million (Docket No. 66–67, Final Rule, 67 FR 2723 (March 10, 1967)), rose in 1981 to $10 million (Docket No. 79–93, 45 FR 234328, (April 1, 1980)), and rose again in 1990 to $15 million (Docket No. 90–1, Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990)).

experience under the Commission's program at that time. The Commission was not aware of any instance in which passengers had lost funds as a result of cruise line bankruptcies or other failures to perform, and the economy and the cruise industry were thriving. The risk of nonperformance appeared minimal.

The past two years have seen a dramatic shift in that scenario. Since September 2000, five cruise lines that participated in the Commission's program have ceased operations: Premier Cruise Operations Ltd. (''Premier''), New Commodore Cruise Lines Limited (''Commodore''), Cape Canaveral Cruise Lines, Inc. (''Cape Canaveral''), MP Ferrymar, Inc. and American Classic Voyages Company (''AMCV''). In addition, the Commission is aware of at least two other cruise lines that ceased operating. Even though they sold almost all passages to U.S. citizens within the United States, Renaissance Cruises, Inc. (''Renaissance'') and Great Lakes Cruises, Inc.[5] did not participate in the Commission's program because they embarked passengers only from ports outside of the U.S. Of those cruise lines, Premier and Renaissance are in the process of being liquidated through bankruptcy proceedings in other countries, Commodore and AMCV filed for reorganization under the U.S. bankruptcy laws, and the remaining lines ceased operations without filing for bankruptcy. Financial coverage under the Commission's program was necessary to meet passenger claims for Premier, Commodore, and, to a small extent, Cape Canaveral.

AMCV had evidenced its financial responsibility by means of self-insurance and thus, most of its passengers received no reimbursement other than through credit cards. Self-insurance is a coverage option that no longer is permitted. *See* Docket No. 02–07, *Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations,* 67 FR 44774 (July 5, 2002). Despite Commodore having a surety bond that covered its total UPR at the time it ceased operations, many of its passengers have yet to be reimbursed almost two years later. Premier's $15 million surety bond did not cover the entire amount of its UPR, estimated to have been approximately $22 million. Only by reliance on the obligation of credit card issuers to reimburse those passengers who had charged their purchases will Premier's surety bond be sufficient to satisfy all passenger claims.

The bankruptcies we have seen are symptomatic of the economic circumstances of the past few years and the decline in tourism after the events of September 11, 2001. The environment has changed significantly from that of 1996 when the Commission decided to hold in abeyance its efforts to require coverage for all UPR. The industry continues to consolidate. Large industry conglomerates own a number of cruise lines.[6] Carnival Corporation and Royal Caribbean Cruises Limited each are attempting to purchase P&O Princess Cruises Plc., which operates P&O Cruises and Princess Cruises. The size and number of vessels continue to increase, thus raising capacity. Recent reports indicate that six new vessels are anticipated to be launched in the remainder of 2002, another thirteen vessels in 2003, and still another seven in 2004.[7] Most of those vessels will have a capacity significantly exceeding 2,000 passengers, and three will have a capacity of 3,000 passengers or more.

Another indicator of concern is the number of complaints received by the Commission. For much of the history of the Commission's administration of Pub. L. 89–777, the agency received few complaints from passengers. In recent years, however, the Commission has been receiving several hundred complaints per year. In addition, the Commission now receives an ever-increasing number of inquiries from members of Congress about problems experienced by their constituents.

The $15 Million Ceiling

The Commission has examined its current $15 million ceiling in light of the above-described circumstances. Since 1967, when the ceiling was set at $5 million, the consumer price index has increased more than five-fold. Simply keeping pace with that index would indicate a ceiling of over $25 million. Yet the cruise industry itself and the amount of UPR outstanding at any one time has increased to a much greater degree. A coverage requirement capped at $25 million would be wholly inadequate for some cruise lines whose fleets consistently have outstanding UPR in the hundreds of millions of dollars. In addition, smaller operators may be at a competitive disadvantage vis-à-vis larger operators by having to cover all of their outstanding UPR, a requirement that is not imposed on larger operators under the present rule.

Finally, recent experience has demonstrated that increased coverage requirements must be put in place *before* a PVO begins to experience financial difficulty. Once a PVO is in financial peril, any Commission action to increase coverage requirements could increase the risk of nonperformance to passengers.

For all of these reasons, the Commission proposes to eliminate the ceiling on coverage requirements, and to require coverage based on the total amount of UPR for all PVOs. However, the Commission recognizes this could be costly to many in the industry. Accordingly, it is proposed that coverage of all passenger funds for voyages not yet performed be achieved in part by relying on the obligations of credit card issuers under the Fair Credit Billing Act (''FCBA''), 15 U.S.C. 1666–1666j, thus reducing the amount of coverage that must be filed with the Commission. This combination of credit card responsibilities and the coverage filed with the Commission would protect all UPR within the scope of section 3. Section 540.5 of the rules would be modified to implement this new approach, and will utilize a newly defined term, ''excepted passenger revenue,'' as defined in proposed section 540.3(i)(2), which is described below. UPR would be redefined to exclude excepted passenger revenue (''EPR'').

Excepted Passenger Revenue

The Commission is mindful of the tremendous cost and difficulty that may be faced by some PVOs in covering all UPR (as currently defined), and therefore proposes to exclude revenue received from credit card charges made within 60 days of sailing from the computation of UPR. Reliance on the current statutory obligations of credit card issuers to provide protections to their cardholders would substantially reduce coverage requirements for almost all PVOs, while not diminishing passenger protection. Performance bonds, guaranties, and escrow accounts established under the Commission's program will protect passengers not otherwise protected by their credit card issuers. The purpose of these bonds, guaranties, and escrow accounts is to provide passenger protection. They do not represent an asset of the cruise line, but a separate asset available to reimburse passengers.

[5] Great Lakes Cruises, Inc. operated the vessel MTS ARCADIA and is not to be confused with the Great Lakes Cruise Company that markets the vessels COLUMBUS and LE LEVANT.

[6] Carnival Corporation now owns Carnival Cruises, Holland America Line, Windstar Cruises, Cunard Line, Seabourn Cruise Line, and Costa Cruises. Royal Caribbean Cruises Limited owns Celebrity Cruises and Royal Caribbean International. Star Cruises Plc. owns Star Cruises, Norwegian Cruise Line, and Orient Lines.

[7] www.cruise-news.com/coming.html, ''Coming Attractions—Index of Future Liners Now Under Construction,'' August 28, 2002.

The proposal to exclude certain credit card charges from the computation of UPR is based upon construing Pub. L. 89–777 in a manner consistent with the FCBA. The FCBA requires credit card issuers to refund money for ''billing errors'' when a purchaser notifies the credit card issuer of the billing error in writing within 60 days after the credit card issuer transmits a statement containing the billing error. The term ''billing error'' is defined in such a way as to include ''goods or services * * * not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.'' 15 U.S.C. 1666(b)(3). The nonperformance of a cruise appears to fit within this statutory definition of a failure to provide goods or services as agreed.

The FCBA was enacted after the passage of Pub. L. 89–777. There is a general presumption in the law that a subsequent statute and a prior statute should be construed in a reasonable manner that ''makes sense.'' *See, e.g., United States* v. *Fausto*, 484 U.S. 439, 453 (1988) (''reconciling many laws enacted over time, and getting them to ''make sense'' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.''). In Pub. L. 89–777, Congress intended to protect passengers from nonperformance of transportation by requiring the Commission to ensure that PVOs are able to reimburse passengers if voyages are not performed. In the FCBA, Congress intended to provide protection for consumers from a failure in the delivery of goods or services within 60 days of the transmission of a bill. Both Pub. L. 89–777 and the FCBA are consumer protection statutes, and should be construed so as to maximize the protections available to consumers. Our proposed rule is premised on the notion that the best way to understand the relationship between the two complementary and overlapping statutes is for the Commission to require PVOs to provide proof of adequate financial responsibility for tickets that are purchased by credit card more than sixty days before a passenger is scheduled to embark, and for tickets that are purchased at any time by other means not covered by the FCBA. Passengers will be covered adequately by the FCBA for tickets purchased with a credit card less than 60 days before a cruise takes place, and will have an obligation to inform their credit card issuer in writing in the event of nonperformance of a cruise. It will be incumbent on affected passengers to comply with time or other requirements to obtain compensation from their credit card issuer.

Based on this analysis, it also would appear that requiring PVOs to provide coverage for UPR from tickets purchased by credit card within 60 days of embarkation, given the existence of the FCBA, would be redundant and would impose a needless financial burden. Therefore, pursuant to its statutory authority to determine what is ''necessary to establish the financial responsibility of'' PVOs, 46 U.S.C. app. 817e(a), the Commission proposes that passenger revenues received within 60 days of embarkation and paid for by a credit card that is subject to the FCBA be excluded from the calculation of UPR. This proposal is located in the ''definitions'' section of the rule, in such a way that UPR will be defined as passenger revenues received except for revenues received by credit card for a voyage to take place within 60 days.[8]

The proposed rule, however, would not permit a PVO to rely exclusively on excepted passenger revenue and thereby avoid supplying any evidence of financial responsibility. All PVOs would be required to provide, as a minimum, an amount of financial responsibility equal to ten percent of the sum of the highest amount of UPR plus EPR within the two years immediately preceding the filing of the application. This amount would be in addition to the amount required to cover UPR.

Technical Changes

A number of technical changes that are expected to have little, if any, impact also are proposed. They include the elimination of references to insurance as a means of performance coverage and escrow accounts as a means of casualty coverage. Insurance has never been used by any PVO to provide performance coverage, and it appears in any event to be inappropriate as a device for providing such coverage. Similarly, escrow accounts are designed to provide coverage for performance, and not casualty.

The Commission's rules formally require the filing of an application with the Secretary of the Commission in order to obtain a performance or casualty certificate. In practice, however, applications have always been filed with the appropriate operating bureau. Accordingly, the proposed rule reflects this by requiring the filing of documents with the Bureau of Consumer Complaints and Licensing. The proposed rule also would effect changes with respect to the filing of information. Prior requirements to file certain information by certified or registered mail would be replaced with a requirement that service in certain situations be by certified mail or other methods that would provide actual notice. This change would make the requirements consistent with the Commission's requirements in 46 CFR part 515, concerning Ocean Transportation Intermediaries.

Section 540.1 (b) would be modified to emphasize that failure to comply with subpart A may result not only in denial of an application, but also revocation of an existing certificate. The rule's language would be changed slightly to make it consistent with the statutory language. A similar provision applicable to subpart B would also be added to section 540.20.

Section 540.2 would be modified by deleting definitions of ''Insurer'' and ''Evidence of Insurance,'' for the reasons explained above. In addition, the definition of ''whole-ship'' charter would be expanded to include ''partial-ship'' charters. A definition for the term ''Principal(s)'' would be added. Previously, provisions of subpart A imposed requirements on ''Owners or Charterer(s).'' However, section 3 of Pub. L. 89–777 imposes performance certificate requirements on ''any person'' performing a number of functions. The Commission always has insisted on the coverage being in the name of the ticket or passage contract issuer at a minimum, even though that entity may not be the same as an owner or charterer. Accordingly, the term ''Principal'' will refer to all entities deemed necessary to be covered.

Reporting Requirements

The Commission proposes to create new sections 540.8 and 540.26, consolidating reporting requirements for each subpart within a single section. Previously, reporting requirements have been interspersed within various sections. It is hoped that this consolidation will make it easier for affected entities to understand and comply with reporting requirements. This restructuring of the rules requires renumbering of all sections that follow the new sections in each subpart.

Two other changes have been made with respect to reporting requirements. First, the description of a material change required to be reported within five days would be expanded to include

[8] This proposed rule does not create any right of subrogation to the UPR covered by the Commission's program by credit card issuers that have reimbursed passengers for transactions involving excepted passenger revenue. Whatever means credit card issuers use to cover risks posed by excepted passenger revenue or the FCBA is beyond the scope of this proceeding.

a change in Principal for performance coverage and owner or charterer for casualty coverage. Second, in order for the Commission to have better information on the adequacy of coverage, the frequency of reporting requirements has been increased from semiannually to quarterly in sections 540.8 and 540.26.

Renumbered sections 540.9 and 540.27 have been reworded for clarification purposes. In addition, a new subsection (d) has been added to each section that would provide for automatic suspension or revocation of a certificate upon ten days' notice, for failure to comply in a timely manner with reporting requirements. On occasion, the Commission has experienced significant delays in obtaining information from some certificants. In such circumstances, it is hoped that this change will be more effective in obtaining required reports than the threat of Commission enforcement action.

Resolution of Passenger Claims in the Event of Nonperformance

In order to encourage PVOs to settle claims for nonperformance and to provide protection to passengers who are otherwise unable to obtain relief, the proposed rule would allow passengers to seek arbitration through a private arbitrator or the Commission's Alternative Dispute Resolution (''ADR'') program, 46 CFR part 502, subpart U, if after six months their section 3 claims have not been settled by the PVO. In addition, passengers may utilize other means of ADR at any time. The Commission would offer ADR services in such cases since its ADR program is designed to resolve issues which are ''material to a decision concerning a program of the Commission and with which there is a disagreement, between,'' *inter alia,* ''the persons who would be substantially affected by the decision.'' 46 CFR 502.402(f).

ADR provides a variety of means to resolve disputes, some more formal than others. Arbitration, the most formal of the choices, may be used when all parties consent. 46 CFR 502.406(a)(1). ''Consent may be obtained either before or after an issue in controversy has arisen.'' *Id.* Arbitration awards are binding. ''It is an adjudicatory process, the scope of which in a particular controversy is defined in an arbitration agreement. Awards in such proceedings are enforceable in federal District Court pursuant to title 9 of the U.S. Code.'' Notice of Proposed Rulemaking, 46 CFR part 502, 66 FR 27922 (May 21, 2001).

The Commission generally would prefer that parties utilize other, less formal means than arbitration. They include conciliation, facilitation, mediation, fact-finding, and the use of ombudsmen.[9] 46 CFR 502.402(a). These proceedings are not inherently binding; even though the parties may agree to be bound by a determination in one of these proceedings. Participation in any of these processes is also voluntary. 46 CFR 502.403(c).

Most passenger claims presumably would be resolved through mediation or the Commission's ombuds services, with arbitration reserved for those instances where an agreement resolving the dispute cannot be reached between the parties. Should passengers seek to utilize the Commission's ADR services, the Commission's Dispute Resolution Specialist, 46 CFR 501.5(h)(1), will determine the means most useful for each situation, but arbitration would be available only with respect to claims not paid within six months.

The proposed rule would effectuate the availability of ADR by adding provisions consenting to arbitration to the bond, guaranty, and escrow agreement forms in the rule. *See* 46 CFR part 540, subpart A. As proof of financial responsibility PVOs must present to the Commission a bond, guaranty, or escrow agreement.[10] This mechanism to ensure financial responsibility is set in place to protect and reimburse passengers in the event that the PVO does not perform the voyage for which the passenger paid.

The language of Pub. L. 89–777 stipulates that PVOs must supply ''a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance.'' 46 U.S.C. app. 817e(a). Currently the guaranty and escrow agreement forms contain language requiring the financial responsibility provider to make indemnification payments to the aggrieved passenger if, within 21 days after such passenger has obtained a ''final judgment (after appeal, if any) against [the PVO] from a United States Federal or State Court of competent jurisdiction,''[11] the PVO has not paid the claim. However, obtaining such a court judgment is time-consuming and can cost more than the monetary value of the underlying claim. Therefore, the proposed rule would require that payment will also be due if the passenger has received an arbitration award through a private arbitrator or the Commission's ADR program. Moreover, consent to such a proceeding would be provided as part of the PVO's proof of financial responsibility. Thus, if a passenger elects to initiate a request for resolution of its claim, the PVO would be obligated to participate. Passengers who elect to use the Commission's services may request such action directly from the Commission's Dispute Resolution Specialist, who may appoint a third party neutral. Although the third party neutral may be a Commission employee, it is very likely that a neutral from the private sector would be appointed. In such case, fees and expenses would be borne by the parties as they agree, in accordance with 46 CFR 502.404(d).

The proposed rule would enact this requirement by adding a new section 540.10(f). In addition, in the bond (Form FMC–132A) and guaranty (Form-133A) forms and sample escrow agreement in Appendix A, language would be added to obligate the financial responsibility provider to honor arbitration awards, and to provide for consent by the passenger vessel operator to the use of arbitration under the Commission's ADR program.

Forms

The Commission's application form would be revised by the proposed rule to comport more closely with the information needed in an application. Although our rules require submission of the application form, the current version is not very useful to filers or staff reviewing the filing. The new

[9] These procedures were more thoroughly explained in the Notice of Proposed Rulemaking, 66 FR 27922 (May 21, 2001), for the ADR rule as follows:

(1) Mediation ''is a process in which a mediator facilitates communication and negotiation between or among parties to a controversy and assists them in reaching a mutually acceptable resolution of the controversy * * *. [T]he key aspect of [mediation] is that the parties control the terms of any agreement to resolve the dispute.''

(2) ''Conciliation is similar [to mediation], but is relatively informal and unstructured.''

(3) Facilitation ''is a group process that is usually goal-oriented.''

(4) Fact-finding ''involves the use of a neutral third party to investigate and determine a disputed fact. It is usually used for technical issues or significant factual issues which are part of a larger dispute. Sometimes, fact-finding is used in conjunction with mediation to resolve a fact which may be important to resolution of the controversy.''

(5) The use of ombuds ''involves the use of an employee or organization component to whom complaints or problems can be brought with the hopes of quick, informal resolution.''

[10] Self-insurance was eliminated in Docket No. 02–07, Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations, 67 FR 44774 (July 5, 2002). Insurance would be eliminated by this proposed rule.

[11] This language, and any new language added in this rulemaking, will also be added to the bond form so that all forms of financial responsibility would be consistent.

application form would be shorter, but include a separate Vessel Schedule (Form FMC–131–VS) for each vessel.

The Commission would add a new form to subpart B, Form FMC–140, Uniform Endorsement. Such a Uniform Endorsement has been in use for a number of years to protect passengers from the application of high deductibles and exclusions that may otherwise exist in insurance policies.

Other Matters

To thoroughly evaluate the impact of this proposed rule, the Commission encourages those commenting to provide cost data reflecting any changes in cost, whether an increase or decrease, to those affected. Any such cost data will be provided confidential treatment to the full extent allowable by law.

The reporting requirements in sections 540.8 and 540.26 and the revised application form FMC–131 with accompanying vessel schedules (Form FMC–131–VS) are being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Public burden of this collection of information for 42 respondents is estimated to be 684 hours annually (180 hours for Forms FMC–131 and 131–VS and 504 hours for sections 540.8 and 540.26). Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication of this Notice of Proposed Rulemaking in the **Federal Register**.

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a)), and for the reasons stated above, the Federal Maritime Commission proposes to amend 46 CFR part 540 to read as follows:

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

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540.1 Scope.
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540.3 Proof of financial responsibility, when required.
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540.6 Surety bonds.
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Form FMC–132A
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Appendix A—Example of Escrow Agreement for use under 46 CFR 540.5(b)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

540.20 Scope.
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540.24 Insurance, surety bonds, self-insurance, and guaranties.
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560.26 Reporting requirements.
540.27 Denial, revocation, suspension, or modification.
540.28 Miscellaneous.
Form FMC–132B
Form FMC–133B
Form FMC–140

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356—1358, 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

§ 540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this subpart may result in denial of an application for a certificate or revocation of an existing certificate. Vessels operating without the proper certificate may be denied clearance. In addition, any person who shall violate this part shall be subject to a civil penalty of not more than $6,000 in addition to a civil penalty of $220 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817e).

§ 540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodation or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) (1) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other

accommodations, services, and facilities relating thereto not yet performed, but does not include excepted passenger revenue.

(2) *Excepted passenger revenue* means that passenger revenue received for transportation and all other accommodations, services, and facilities relating thereto not yet performed, when payment is tendered by the passenger within 60 days of the date the passenger is scheduled to embark through the use of a credit card that is subject to the provisions governing the correction of billing errors at 15 U.S.C. 1666. An extension of credit by the person arranging, offering, advertising or providing passage shall not be considered excepted passenger revenue.

(j) *Whole-ship or partial-ship charter* means an arrangement between a passenger vessel operator and a corporate or institutional entity:

(i) Which provides for the purchase of all, or a significant part of, the passenger accommodations on a vessel for a particular voyage or series of voyages; and

(ii) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

(k) *Principal(s)* include the ticket or passage contract issuer(s) and all other persons arranging, offering, advertising, or providing passage on a vessel subject to this subpart.

§ 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise, or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC–131, Application for Passenger Vessel Certificate, with accompanying Vessel Schedule(s) on Form FMC–131–VS. Copies of Forms FMC–131 and FMC–131–VS may be obtained from the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573, or the Commission Web site, *http://www.fmc.gov.*

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, by the Principal(s) at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,549. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,276.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. Notice of the application for issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

§ 540.5 Guaranties and escrow accounts.

The amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 100 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, plus an additional fixed amount of ten percent of the sum of the unearned passenger revenue and the excepted passenger revenue on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue plus excepted passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

(a) Filing with the Commission a guaranty on Form FMC–133A, by a shipowners' Protection and Indemnity Association acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

(1) Termination or cancellation of a guaranty, whether by the assured or by the guarantor, and whether for nonpayment of fees, assessments, or for other cause, shall not be effected:

(i) Until notice in writing has been given to the assured or to the guarantor and to the Bureau of Consumer Complaints and Licensing at its office, in Washington, DC 20573, by certified U.S. mail or other method reasonably calculated to provide actual notice, and

(ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or guarantor shall be simultaneous to such notice given to the Commission. The guarantor shall remain liable for claims covered by said guaranty arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the guarantor as to claims included in said guaranty and in the event of said insolvency or bankruptcy, the guarantor agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No guaranty shall be acceptable under these rules which restricts the liability of the guarantor where privity of the Principal(s) has been shown to exist.

(4) In the case of a guaranty which is to cover an individual voyage, such guaranty shall be in an amount determined by the Commission to equal the passenger revenue for that voyage.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in Appendix A of Subpart A of this Part.

(c) Revenues derived from whole-ship or partial-ship charters, as defined in section 540.2(1), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of

the execution of the charter if the operator has a Certificate (Performance) for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application;

(2) the chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and

(3) a document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89–777 are waived by the reduction in section 3, Public Law 89–777, financial responsibility coverage attributable to the exclusion of such funds from the operator's unearned passenger revenue.

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC–132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form-132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§ 540.8 Reporting requirements.

(a) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility, or (3) includes a change in Principal(s).

(b) In addition, every person who has been issued a Certificate (Performance) must submit to the Commission a quarterly statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. The quarterly statements must cover each month of the quarter and include a statement of the highest unearned passenger vessel revenue and the highest excepted passenger revenue accrued for each month in the reporting period. In addition, the statements will be due within 30 days after the close of every quarter.

(c) Each applicant, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary of the Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the Certificant, escrow agent, or guarantor, as the case may be, by certified U.S. mail or other method reasonably calculated to provide actual notice at its last known address on file with the Commission.

(d) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person(s) to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(e) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (c).

§ 540.9 Denial, revocation, suspension, or modification.

(a) A Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission.

(d) Notwithstanding the above provisions, failure to comply timely with the reporting requirements in this part may subject a certificant to automatic suspension or revocation of their Certificate (Performance) upon ten days' notice, without hearing. A certificant may avoid such suspension or revocation by filing within the ten days the required reports or proof that the reports had been timely filed.

§ 540.10 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) The Commission's bond (Form FMC–132A), guaranty (Form FMC–133A), and application (Form FMC–131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(c) Any securities or assets accepted by the Commission (from applicants, guarantors, escrow agents, or others), under the rules of this subpart must be physically located in the United States.

(d) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Pub. L. 89–777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

(e) Passengers with claims for nonperformance under this subpart should file such claims with the appropriate Principal(s) and their providers of financial responsibility. In the event that such a passenger claim has not been resolved within six months after, but no more than three years after, filing with the Principal(s) and providers of financial responsibility, a passenger has the option to request arbitration under 46 CFR 502.406. This six month time requirement may be waived by the Dispute Resolution Specialist for good cause.

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

§ 540.20 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby Owners and Charterer(s) having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

(b) Failure to comply with this subpart may result in denial of an application for a certificate or revocation of an existing certificate. Vessels operating without the proper certificate may be denied clearance. In addition, any person who shall violate this part shall be subject to a civil penalty of not more than $6,000 in addition to a civil penalty of $220 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817d).

§ 540.21 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) United States includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, ''passengers embarking at United States ports'' means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

§ 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the Owners and Charterer(s) of such vessel.

§ 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an Application on Form FMC–131, Application for Passenger Vessel Certificate, with accompanying Vessel Schedule(s) on Form FMC–131–VS. Copies of Form FMC–131 and Form FMC–131–VS may be obtained from the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $1,111. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $557.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his authority.

§ 540.24 Insurance, surety bonds, self-insurance, and guaranties.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance by means of a policy (accompanied by Form FMC–140), issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of

passenger accommodations aboard the vessel, calculated as follows:

Twenty thousand dollars for each passenger accommodation up to and including 500; plus

Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus

Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus

Five thousand dollars for each passenger accommodation in excess of 1,500;

Except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Bureau of Consumer Complaints and Licensing at its office in Washington, DC 20573, by certified U.S. mail or other method reasonably calculated to provide actual notice, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the Owners or Charterer(s) has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC–132B issued by a bonding company authorized to do business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress. The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC–133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section. The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

§ 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

§ 540.26 Reporting requirements.

(a) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart,

(2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility, or

(3) involves a change in Owner(s) or Charterer(s). Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

(b) In addition to reports required under § 540.23(d), every person who has

been issued a Certificate (Casualty) must submit to the Commission a quarterly statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. The quarterly statements must cover each month of the quarter. In addition, the statements will be due within 30 days after the close of every quarter.

(c) Each applicant, insurer, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary of the Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary of the Commission in accordance with the above provision must also serve the certificant, insurer, or guarantor, as the case may be, by certified U.S. mail or other method reasonably calculated to provide actual notice, at its last known address on file with the Commission.

(d) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(e) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

§ 540.27 Denial, revocation, suspension, or modification.

(a) A Certificate (Casualty) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, or guaranty.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission.

(d) Notwithstanding the above provisions, failure to comply timely with the reporting requirements in this part may subject a certificant to automatic suspension or revocation of their Certificate (Casualty) upon ten days' notice, without hearing. A certificant may avoid such suspension or revocation by filing within the ten days the required reports or proof that the reports had been filed timely.

§ 540.28 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) The Commission's bond (Form FMC–132B), guaranty (Form FMC–133B), and application (Form FMC–131 as set forth in Subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(c) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, or others) under the rules of this subpart must be physically located in the United States.

(d) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Bureau of Consumer Complaints and Licensing evidence of any such arrangement.

By the Commission.

Bryant L. VanBrakle

Secretary.

BILLING CODE 6730–01–P

Form FMC-131

APPLICATION FOR PASSENGER VESSEL CERTIFICATE
FEDERAL MARITIME COMMISSION
Washington, DC 20573-0001
(202) 523-5821 • www.fmc.gov

Type of Certificate
☐ Performance
☐ Casualty
☐ Both

1. (a) Applicant's legal business name and trade name(s) used (provide English translation if other than English) :

_____

_____

(b) Street address:

_____

_____

_____

(c) Telephone: _____

(d) Fax: _____

(e) U.S. Taxpayer Identification Number (TIN), if applicable:

_____

2. (a) Applicant's form of organization, i.e., corporation, partnership, or other form of business association:

_____

(b) If incorporated, name the state or country in which incorporated and date of incorporation:

_____

(c) If partnership or joint venture, give name and address of each partner or member (attach additional page(s) if necessary):

_____

_____

_____

3. Name and street address of applicant's U.S. agent or other person authorized to accept legal service in U.S.: (Submit statement of acknowledgment from agent.)

_____

_____

_____

Telephone: *Fax:* *E-mail:*

4. Number of vessels included in application: _____. Complete and attach a Vessel Schedule (Form FMC-131-VS) for each vessel.

5. Declaration: I declare under penalty of perjury under the laws of the United States of America that the information provided herein is true, correct, and complete.

X_____ *Date:* _____
(Signature of authorized official)

_____ *Address:* _____
Printed Name

_____
Title

If not a corporate officer or partner, please submit Power of Attorney to demonstrate your authority to submit this application.

Submit original application and a Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW • Washington, DC 20573-0001 • Fax (202)523-5830

Form FMC-131-VS

☐ New Schedule
☐ Amended Schedule

VESSEL SCHEDULE for _____
(Full Name of Vessel)

Submit the following documents: Copy of U.S. cruise itinerary ▪ Specimen copy of passenger ticket/passage contract ▪ Documentation of payment and cancellation policy ▪ Proof of principal(s) names (e.g., corporate charter or partnership agreement) ▪ Copy of all applicable charter agreements ▪ Power of attorney/application signing authority

Applicant:

Previous Vessel Name, if any:

Total passenger capacity: _____ *Total number of passenger berths, including 3rd and 4th berths:* _____

Attach information showing fare structure, i.e., number of passenger berths in each price category.

Payment Policy (percentage of payment due at each of the following intervals before sailing date):

60 or more days: _____ *45-59 days:* _____ *30-44 days:* _____ *Less than 30 days:* _____

Principal(s) Information - Provide information on all principals, indicating which of the following describes each principal. Use the letter code(s) below to identify all that apply to each principal.

A. Owner	*D. Parent Company*	*G. Time Charterer*	*J. Other (describe)*
B. Marketing Agent	*E. Operator*	*H. Bare-boat Charterer*	
C. Ticket/Contract Issuer	*F. Technical Manager*	*I. Space Charterer*	

Legal Name of Principal and Trade Name(s) used (provide English translation if not English):

Enter Principal code(s) from above:

Address:

Telephone: *Fax:* *E-mail:*

U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):

Telephone: *Fax:* *E-mail:*

Submitted by: _____ _____
Signature *Date*

_____ _____
Printed Name and Title *Telephone*

Submit this Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW • Washington, DC 20573-0001 • fax (202)523-5830

Attach continuation sheet(s) to list additional principals.

Form FMC-131-VS , Vessel Schedule Continuation Sheet No. _____ of _____ pages.

Continuation Sheet for _____
(Full Name of Vessel)

Legal Name of Principal and Trade Name(s) used (provide English translation if not English):	*Enter Principal code(s) from above:*
Headquarters Address:	
Telephone: *Fax:*	*E-mail:*
U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):	
Telephone: *Fax:*	*E-mail:*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English):	*Enter Principal code(s) from above:*
Headquarters Address:	
Telephone: *Fax:*	*E-mail:*
U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):	
Telephone: *Fax:*	*E-mail:*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English):	*Enter Principal code(s) from above:*
Headquarters Address:	
Telephone: *Fax:*	*E-mail:*
U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):	
Telephone: *Fax:*	*E-mail:*

Submit this Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW • Washington, DC 20573-0001 • fax (202)523-5830

Form FMC-132A

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____

Passenger Vessel Surety Bond
(46 CFR Part 540, Subpart A)

Know all men by these presents, that we _____ _____ (Name of applicant), of _____ (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____ , for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission ("FMC") such a bond to insure financial responsibility and the supplying transportation and other services subject to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described in the event that such legal liability has not been discharged by the Principal within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction, or has obtained an arbitration award. By filing this proof of financial responsibility with the FMC, Principal consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the price paid by or on behalf of such passenger.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____ , 20____ , 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by actual written notice sent to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds by the Principal for the supplying of

transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on _____ day of _____ , 20 _____ .

PRINCIPAL

Name _____

By _____
(Signature and title)

Witness _____

SURETY

[SEAL] Name _____

By _____

(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133A

FEDERAL MARITIME COMMISSION

Guaranty No. _____

Guaranty in Respect of Liability for Nonperformance, Section 3 of Public Law 89-777

1. Whereas _____ (Name of applicant) (Hereinafter referred to as the "Applicant") is the Operator and/or Ticket Issuer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance, or has obtained an arbitration award. By filing this proof of financial responsibility with the FMC, Applicant consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $ _____

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including email or facsimile) that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from payments made to the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including email or facsimile), then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart A of Part 540 of Title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

_____
(Place and Date of Execution)

_____
(Name of Guarantor)

_____
(Address of Guarantor)

By _____
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Appendix A - Example of Escrow Agreement for use under 46 CFR 540.5(b)
Escrow Agreement

1. Legal name(s), state(s) of incorporation, description of business(es), trade name(s) if any, and domicile(s) of each party.

2. Whereas, [name of the passenger vessel operator] ("Operator") and/or [name of the issuer of the passenger ticket] ("Ticket Issuer") wish(es) to establish an escrow account to provide for the indemnification of certain of its passengers utilizing [name vessel(s)] in the event of nonperformance of transportation to which such passengers would be entitled, and to establish the Operator's and/or Ticket Issuer's financial responsibility therefor; and

3. Whereas, [name of escrow agent] ("the Escrow Agent") wishes to act as the escrow agent of the escrow account established hereunder.

4. The Operator and/or Ticket Issuer will determine, as of the day prior to the opening date, the total amounts of U.S. unearned passenger revenues ("UPR") which it had in its possession. Unearned passenger revenues are defined as [incorporate the elements of 46 CFR 540.2(i)].

5. The Operator and/or Ticket Issuer shall on the opening date deposit an amount equal to UPR as determined above, plus a cash amount equal to [amount equal to no less than 10% of the Operator's and/or Ticket Issuer's UPR on the date within the 2 fiscal years immediately prior to the filing of the escrow agreement which reflects the greatest amount of UPR, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement or other methods acceptable to the Commission to determine the amount of coverage required] ("initial deposit").

6. The Operator and/or Ticket Issuer may at any time deposit additional funds into the account.

7. The Operator and/or Ticket Issuer shall, at the end of each business week, recompute UPR by first computing:

A. the amount by which UPR has decreased due to: (1) Refunds due to cancellations; (2) amount of cancellation fees assessed in connection with (1) above; and (3) the amount earned from completed cruises; and

B. the amount by which UPR has increased due to receipts from passengers for future water transportation and all other related accommodations and services not yet performed.

The difference between the above amounts is the amount by which UPR has increased or decreased ("new UPR"). If the new UPR plus the amount of the initial deposit exceeds the amount in the escrow account, the Operator and/or Ticket Issuer shall deposit the funds necessary to make the account balance equal to UPR plus the initial deposit. If the account balance exceeds new UPR plus the initial deposit, the balance shall be available to the Operator and/or Ticket Issuer. The information computed in paragraph 7 shall be furnished to the Commission and the Escrow Agent in the form of a recomputation certificate signed and certified by a competent officer of the Operator and/or Ticket Issuer. Copies sent to the Commission are to be addressed to the Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

8. A monthly report shall be prepared by the Escrow Agent and provided to the Operator and/or Ticket Issuer and the Commission within 15 days of the end of each month and shall list the investment assets of the account, their original cost, their current market value, and the beginning and ending balance of the account.

9. The Operator's and/or Ticket Issuer's independent auditors shall prepare quarterly reports, such reports to be furnished to the Escrow Agent and the Commission, and any shortfall is to be covered within one business day.

10. The Escrow Agent shall invest the funds of the account in qualified investments as directed by the Operator and/or Ticket Issuer. Some examples of qualified investments are, to the extent permitted by law:

(a) Government obligations of the United States or its agencies;

(b) Certificates of deposit, time deposits or acceptances of any bank, savings institution or trust company whose debt obligations are in the two highest categories rated by Standard and Poor's or Moody's, or which is itself rated in the two highest categories by Keefe, Bryette and Woods;

(c) Commercial paper similarly rated;

(d) Certificates or time deposits issued by any bank, savings institution or trust company when fully insured by the FDIC or the FSLIC;

(e) Money market funds utilizing securities of the same quality as above; and/or

(f) Corporate bonds of the three highest categories, as rated by Standard and Poor's or Moody's.

11. Income derived from the investments shall be credited to the escrow account.

12. The purpose of the escrow agreement is to establish the financial responsibility of the Operator and/or Ticket Issuer pursuant to section 3 of Public Law 89 - 777, approved November 5, 1966, and the account is to be utilized to discharge the Operator's and/or Ticket Issuer's legal liability to indemnify passengers for nonperformance of transportation via the [name of vessel(s)]. The Escrow Agent is to make such payments on instructions from the Operator and/or Ticket Issuer, or, in the absence of such instructions, 21 days after final judgment against the Operator and/or Ticket Issuer in a U.S. Federal or State court having jurisdiction, or has obtained an arbitration award. [Operator and/or Ticket Issuer] consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist. The Operator and/or Ticket Issuer will pledge to each passenger holding a ticket for future passage on the Operator's/Ticket Issuer's vessel(s) an interest in the Escrow Account equal to the Fares amount shown on the face of such ticket. The Escrow Agent agrees to act as nominee for each passenger until transportation is performed or until passenger has been compensated.

13. Escrow Agent shall waive right to offset.

14. The Operator and/or Ticket Issuer will indemnify and hold Escrow Agent harmless.

15. Statement of the parties' agreement concerning warranty of *bona fides* by the Operator and/or Ticket Issuer and Escrow Agent.

16. Statement of the parties' agreement concerning fees to be paid by the Operator and/or Ticket Issuer to Escrow Agent, reimbursable expenses to be paid by the Operator and/or Ticket Issuer to Escrow Agent. A statement that fees for subsequent terms of agreement are to be negotiated.

17. Statement of the parties' agreement concerning the term of agreement and renewal/termination procedures.

18. Statement of the parties' agreement concerning procedures for appointment of successor Escrow Agent.

19. Statement that disposition of funds on termination shall be to the Operator and/or Ticket Issuer, if evidence of the Commission's acceptance of alternative evidence of financial responsibility is furnished; otherwise, all passage fares held for uncompleted voyages are to be returned to the passengers. The Operator and/or Ticket Issuer shall pay all fees previously earned to the Escrow Agent.

20. The agreement may be enforced by the passengers, the Escrow Agent, the Operator and/or Ticket Issuer or by the Federal Maritime Commission.

21. All assets maintained under the escrow agreement shall be physically located in the United States and may not be transferred, sold, assigned, encumbered, etc., except as provided in the agreement.

22. The Commission has the right to examine the books and records of the Operator and/or Ticket Issuer and the Escrow Agent, as related to the escrow account, and the agreement may not be modified unless agreed in writing by the Operator and/or Ticket Issuer and Escrow Agent and approved in writing by the Commission.

Form FMC-132B

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____

Passenger Vessel Surety Bond
(46 CFR Part 540, Subpart B)

Know all men by these presents, that We _____ (Name of applicant), of _____ (City), _____(State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____(State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to Subpart B of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall lin no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Public Law 89-777, then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____, 20___, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by actual written notice provided to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such

termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the _____day of _____, 20_____.

PRINCIPAL

Name _____

By _____
(Signature and title)

Witness _____

SURETY

Name _____

By _____
(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133B

FEDERAL MARITIME COMMISSION

Guaranty No. _____

Guaranty in Respect of Liability for Death or Injury, Section 2 of Public Law 89-777

1. Whereas _____ (name of Applicant) (hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Public Law 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under ths Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including e-mail or facsimile) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then on the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including e-mail or facsimile), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46, Code of Federal Regulations, issued under section 2 of Public Law 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

_____
(Place and Date of Execution)

_____
(Name of Guarantor)

_____
(Address of Guarantor)

By _____
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to this Schedule in Accordance with Clause 4

Form FMC-140

Insurance Policy
Uniform Endorsement

Section 2 of Public Law 89-777

Notwithstanding anything to the contrary herein contained, it is herein understood and agreed:

1. The Association (or other insurer) agrees that the risks covered by this policy include the Assured's losses arising from its legal liability in respect of claims for damages for death or personal injury to passengers or other persons on voyages (of the vessels designated in the annexed schedule) to and from United States ports subject to the provisions of Section 2 of Public Law 89-777 (80 Stat. 1356, 1357) as to which the Federal Maritime Commission shall have issued a Certificate (Casualty).

2. The Association's (or other insurer's) liability as to losses relating to claims defined above in Paragraph 1 of this Endorsement shall in no event exceed the amount of the Assured's legal liability under any final judgement (after appeal, if any) against the Assured from a United States federal or state court of competent jurisdiction or under a compromise settlement agreement made with the approval of the Association (or other insurer), provided, however, that the Association's (or other insurer's) total liability in respect of any one accident or occurrence as to each vessel shall be limited to the amount of the policy as specified therein.

3. Notice of termination or cancellation as provided for by the terms of the policy (Certificate) shall apply as to any and all losses, except those relating to claims for death or personal injury defined above in Paragraph 1 of this Endorsement. As to losses relating to said claims only, termination or cancellation whether for nonpayment of premiums, calls, assessments, or for other cause, shall not be effected (i) until notice in writing (including e-mail or facsimile) has been given to the Assured and to the Federal Maritime Commission at its office in Washington, D.C. and (ii) until after thirty (30) days expire from the date notice is actually received by the Commission or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Such notice of termination or cancellation to the Assured shall be simultaneous to such notice given to the Commission. The Association (or other insurer) shall remain liable for claims covered by this policy arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

4. Notwithstanding anything contained herein to the contrary, the insolvency or bankruptcy of the Assured shall not constitute a defense to the Association (or other insurer) as to claims for death or personal injury defined above in Paragraph 1 of this Endorsement. As to said claims only, in the event of insolvency or bankruptcy of the Assured the Association (or other insurer) agrees to pay any unsatisfied final judgements obtained against the Assured on such claims. Provided, however, that such payments shall discharge, to the extend thereof, the insurer's obligations under this policy to the Assured or its trustee in bankruptcy, liquidator, receiver, conservator or statutory successor.

5. Fault, knowledge or privity of the Assured shall not constitute a defense to the Association (or other insurer) nor restrict the Assured's right of recovery under this policy or otherwise lessen the Association's (or other insurer's) obligation in respect of claims for death or personal injury as defined above in Paragraph 1 of this Endorsement.

6. If during the currency of this policy, the Assured requests that a vessel owned or operated by the Assured, and not designated in the annexed schedule, should become subject to this policy (Certificate), and if the Association (or other insurer) accedes to such request and so notifies the Federal Maritime Commission in writing (including e-mail or facsimile), then, provided that within thirty (30) days of receipt of such notice the Federal Maritime Commission grants a Certificate (Casualty) covering such vessel, the vessel shall thereupon be deemed to be one of the vessels included in said schedule and subject to this policy.

7. The Association (or other insurer) hereby designates _____

_____ with offices at _____ as the Association's (or other insurer's) legal agent for service of process for purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46 Code of Federal Regulations issued under Section 2 of Public Law 89-777 (80 Stat. 1356, 1357) entitled Security for the Protection of the Public.

All other terms and conditions, not in conflict with this Endorsement, remain unchanged.

Attached to Policy No.: _____

Association/Insurer: _____

_____/____/_____ _____
Month/Date/Year Signature

_____
Printed Name

_____
Title

Schedule of Vessels Covered by this Endorsement

Vessels Added to this Schedule in Accordance with Paragraph 6

[FR Doc. 02–27642 Filed 10–30–02; 8:45 am]
BILLING CODE 6730–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2603; MB Docket No. 02–141; RM–10428]

Radio Broadcasting Services; Exmore and Belle Haven, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of petitioners Commonwealth Broadcasting, LLC, licensee of Station WEXM(FM), Exmore, Virginia, and Sinclair Telecable, d/b/a Sinclair Communications, licensee of Station WROX–FM, Cape Charles, Virginia, this document dismisses the petition for rule making that underlies the *Notice of Proposed Rulemaking* in this proceeding. *See* 67 FR 42524 (June 24, 2002). The Notice proposed that the Commission reallot Channel 291B from Exmore to Belle Haven, Virginia, and reallot Channel 241B from Cape Charles to Exmore, Virginia, and modify the licenses of Stations WEXM(FM) and WROX–FM to reflect the changes. On June 21, 2002, petitioners filed a request for withdrawal of petition and expression of interest in this matter.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–141, adopted October 2, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27692 Filed 10–30–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2601; MB Docket No. 02–321, RM–10583; MB Docket No. 02–322, RM–10584]

Radio Broadcasting Services; Oak Grove and Opelousas, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed Charles Crawford proposing the allotment of Channel 289A at Oak Grove, Louisiana, as the community's second local aural transmission service. Channel 289A can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) east to avoid a short-spacing to the license site of Station KVVP, Channel 289C3, Leesville, Louisiana. The coordinates for Channel 289A at Oak Grove are 29–43–41 North Latitude and 93–00–05 West Longitude. The Audio Division also requests comment on a petition filed by Opelousas Radio Broadcasters proposing the allotment of Channel 297A at Opelousas, Louisiana, as the community's third local aural transmission service. Channel 297A can be allotted to Opelousas in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.6 miles) south of the community. The coordinates for Channel 297A at Opelousas are 30–28–18 North Latitude and 92–03–14 West Longitude.

DATES: Comments must be filed on or before December 9, 2002, and reply comments on or before December 24, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Opelousas Radio Broadcasters, c/o John M. Pelkey, Garvey, Schubert & Barer, 5th Floor, 1000 Potomac Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–321, 02–322, adopted October 2, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 289A at Oak Grove and Channel 297A at Opelousas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27694 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH40

Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) as endangered under the authority of the Endangered Species Act of 1973, as amended. We are reopening the comment period to allow interested parties additional time to submit information to us for our consideration in making the final determination for this species. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: Comments and information from all interested parties will be accepted until 5 p.m. on December 16, 2002.

ADDRESSES: You may submit written comments and materials concerning the proposed rule to Wayne S. White, Field Supervisor, ATTN: SCCTS, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room W–2605, Sacramento, CA 95825. Written comments may also be sent by facsimile to 916/414–6713 or through the internet to *fw1sonoma_tiger_salamander@fws.gov.* You may also hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Moore or Chris Nagano, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825 (telephone 916/414–6600, facsimile 916/414–6713 or

visit our website at *http://sacramento.fws.gov/*).

SUPPLEMENTARY INFORMATION:

Background

This Distinct Population Segment (DPS) of the California tiger salamander is restricted to a portion of the Santa Rosa Plain in Sonoma County, California, extending from approximately Santa Rosa south to the Cotati area. The factors imperiling this animal in Sonoma County include habitat destruction, degradation, and fragmentation, collection, invasive exotic species, and inadequate regulatory mechanisms. Because of its small numbers, this DPS also is highly vulnerable to chance environmental or demographic events such as drought, disease, or fluctuations in mating success.

Pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), we published an emergency rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered on July 22, 2002 (67 FR 47726–47740). The emergency rule provides immediate Federal protection to this DPS for a period of 240 days. We also published a proposed rule on July 22, 2002, to list the Sonoma County DPS of the California tiger salamander as endangered under our normal listing procedures (67 FR 47758–47760). A public hearing on the proposed rule was held on October 1, 2002, in Santa Rosa, California.

For further information regarding background biological information, previous Federal actions, factors affecting the subspecies, and conservation measures available to the Sonoma County DPS of the California tiger salamander, please refer to our emergency and proposed rules published in the **Federal Register** on July 22, 2002.

Public Comments Solicited

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Sonoma County DPS of the California tiger salamander as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we are reopening the comment period to solicit additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Sonoma County DPS of the California tiger salamander;

(2) The location of any additional breeding sites of this DPS, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, biology, ecology, or population size of this DPS; and

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species in Sonoma County.

The comment period, which originally closed on September 20, 2002, and was then extended to October 21, 2002 (67 FR 54761, August 26, 2002), will now close on the date specified above in the **DATES** section. Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: SCCTS'' and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, at the above address.

Author

The primary author of this notice is Chris Nagano, Deputy Chief, Endangered Species Division (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 16, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27650 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG93

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Sidalcea keckii* (Keck's checkermallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the draft economic analysis for the proposed designation of critical habitat for *Sidalcea keckii* (Keck's checkermallow) located in Fresno and Tulare Counties, California. We are reopening the comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the draft economic analysis and the proposed critical habitat designation until December 2, 2002.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Susan Moore, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea keckii (Keck's checkermallow) is an annual herb of the mallow family (Malvaceae) endemic (native and restricted to) the western foothills of the Sierra Nevada mountains in California. It produces bright pink flowers in April and early May, and likely forms a persistent soil seed bank consisting of viable seeds from numerous years. *S. keckii* was first

described in 1940 from samples taken near the town of White River in southern Tulare County, but the plant could not be relocated by botanists for over 50 years. Many botanists had presumed it to be extinct when a new population was discovered near Mine Hill in central Tulare County in 1992. Based on soils information from the new site, surveys were conducted on a previously documented site in the Piedra area of Fresno County, and a population was rediscovered there in 1998. We have recently learned of another population discovered near Piedra in 2002, but we do not yet have details regarding its exact location (John Stebbins, Herbarium Curator, California State University, *in litt.*, 2002). We have also received information that the standing population at Mine Hill may have been extirpated by conversion of the habitat to an orange grove (J. Stebbins, *in litt.*, 2002). Much of the area around the original population at Mine Hill remains potentially viable however, and may contain a seed bank or standing plants.

We listed *Sidalcea keckii* as an endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) on February 16, 2000 (65 FR 7757). On June 19, 2002, we proposed three critical habitat units for the plant totaling approximately 438 hectares (ha) (1,085 acres (ac)) (67 FR 41669). The proposed critical habitat units are located near Piedra in Fresno County, and near Mine Hill and White River in Tulare County. The areas are all privately owned except for 3 ha (7 ac) of Federal land at the Piedra site managed by the U.S. Bureau of Reclamation. Approximately 77 ha (189 ac) of the privately owned land at the Piedra site is on a reserve established by the Sierra Foothill Conservancy for the protection of *S. keckii* and other rare plants.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat.

The public comment period for the June 19, 2002, proposal originally closed on August 19, 2002. We have prepared a draft economic analysis on the effects of the proposed critical habitat designation, and are now announcing its availability for review. The draft analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. Reopening of the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat for *Sidalcea keckii* do not need to be resubmitted as they will be fully considered in the final determination.

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for *Sidalcea keckii* will consider information and recommendations from all interested parties. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. Hand deliveries must be made during normal business hours.

You may also send comments by electronic mail (e-mail) to *fw1kecks_checkermallow@fws.gov.*

Hand-delivered or mailed comments and information should be submitted to the Sacramento Fish and Wildlife Office, as found in the **ADDRESSES** section. Comments and information submitted by e-mail should be addressed to *fw1kecks_checkermallow@fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Plans or potential for development within the area proposed to be designated, notwithstanding the comments of the county employee contacted in preparing the economic analysis;

(2) Plans or potential for conversion of land within the area proposed to be designated to other types of agricultural uses, such as vineyards, which might require a permit under section 404 of the Clean Water Act, or other types of Federal permits;

(3) The likelihood of ''stigma effects'' and costs associated with the designation; and

(4) The likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the designation.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section. Copies of the draft economic analysis are available on the Internet at *www.r1.fws.gov* or by writing or calling Susan Moore, at the address or telephone number listed above.

Author

The primary author of this notice is Glen Tarr (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 23, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–27649 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 211

Thursday, October 31, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–100–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations issued under the Animal Welfare Act for guinea pigs, hamsters, and rabbits.

DATES: We will consider all comments that we receive on or before December 30, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-100–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–100–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–100–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the Animal Welfare Act regulations for guinea pigs, hamsters, and rabbits, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Animal Welfare; Guinea Pigs, Hamsters, and Rabbits.

OMB Number: 0579–0092.

Type of Request: Extension of approval of an information collection.

Abstract: The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) administers regulations and standards that have been promulgated under the Animal Welfare Act to promote and ensure the humane care and treatment of regulated animals under the Act. The regulations in title 9, part 3, subparts B and C, of the Code of Federal Regulations (CFR) contain specifications for the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits. The regulations require, among other things, the documentation of specified information concerning the transportation of these animals.

The transportation standards for guinea pigs, hamsters, and rabbits require intermediate handlers and carriers to accept only shipping enclosures that meet the minimum requirements set forth in the regulations (§§ 3.36 and 3.61) or that are accompanied by documentation signed by the consignor verifying that the shipping enclosures comply with the regulations. If guinea pigs, hamsters, or rabbits are transported in cargo space that falls below 45 °F (7.2 °C), the regulations specify that the animals must be accompanied by a certificate of acclimation signed by a USDA-accredited veterinarian.

In addition, all shipping enclosures must be marked with the words ''Live Animals'' and have arrows indicating the correct upright position of the container. Intermediate handlers and carriers are required to attempt to contact the consignee at least once every 6 hours upon the arrival of any live animals. Documentation of these attempts must be recorded by the intermediate handlers and carriers and maintained for inspection by APHIS personnel.

The above reporting and recordkeeping requirements do not mandate the use of any official government form.

The burden generated by APHIS requirements that all shipping documents be attached to the container has been cleared by the Office of Management (OMB) under OMB control number 0579–0036.

The reporting and recordkeeping requirements of 9 CFR part 3, subparts B and C, are necessary to enforce regulations intended to ensure the humane treatment of guinea pigs, hamsters, and rabbits during transportation in commerce.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.11555 hours per response.

Respondents: Intermediate handlers, carriers, ''A'' and ''B'' dealers (as consignors), USDA-accredited veterinarians.

Estimated annual number of respondents: 1,470.

Estimated annual number of responses per respondent: 1.53.

Estimated annual number of responses: 2,240.

Estimated total annual burden on respondents: 260 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of October, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–27685 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–098–1]

Giant Salvinia; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to a proposed field release of the non-indigenous salvinia weevil for the biological control of the aquatic weed giant salvinia. The environmental assessment documents our review and analysis of environmental impacts associated with widespread release of this agent. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 2, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-098–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–098–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–098–1'' in the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1228; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

Giant salvinia (*Salvinia molesta*) is a free-floating aquatic fern, native to South America, with a tremendous growth rate and the potential to significantly affect water-reliant agricultural industries and recreation and the ecology of freshwater habitats throughout much of the United States.

Giant salvinia reproduces vegetatively through fragmenting and from dormant buds breaking away. The colonizing or immature stage of giant salvinia is characterized by small leaves that lie flat upon the water. As plant growth accelerates, the leaves become larger, crowding occurs, and the plants are pushed upright. Mats may grow to a meter thick and can cover large areas.

The Animal and Plant Health Inspection Service (APHIS) listed giant salvinia as a noxious weed in 1983. Under APHIS' regulations, no person may move giant salvinia into or through the United States, or interstate, unless he or she obtains a permit for the movement from APHIS.

Because giant salvinia is a free-floating plant, it disperses by passive means (water currents and wind) and by ''hitchhiking.'' Animals may carry the plants over short distances, but humans can spread it widely on fishing gear and boating equipment. Intercontinental dispersal and dispersal within the United States have probably occurred when giant salvinia was sold in the nursery trade, either intentionally as a plant for aquaria or for ponds, or unintentionally when it ''hitchhiked'' with other aquatic plants collected for academic study or for use in aquaria or ponds. Although native to southeastern Brazil, giant salvinia is now found in North America, South America, Africa, Asia, Australia, New Guinea, and Oceania.

In the past several years, giant salvinia has been detected in the United States, mostly in association with the nursery trade in aquatic plants. Generally, detections have been in small, confined sites and are currently contained or have been eradicated. Such detections have occurred in Alabama, Arizona, Florida, Hawaii, Indiana, Louisiana, Maryland, Missouri, North Carolina, South Carolina, Texas, and Virginia. Most recently, giant salvinia was found in the Toledo Bend Reservoir and the surrounding areas in Louisiana and eastern Texas. As a result of this infestation, APHIS prepared an environmental assessment (EA) and has issued permits for the environmental release of the non-indigenous salvinia weevil (Cyrtobagous salviniae) into the limited area of the Toledo Bend Reservior.

APHIS has now received a permit application for additional releases of the salvinia weevil into other areas of the continental United States beyond the area considered in the existing APHIS EA. The applicant proposes to release the salvinia weevil to reduce the severity and extent of giant salvinia infestation in the United States. The salvinia weevil is native to Brazil, Bolivia, and Paraguay. Salvinia weevil larvae tunnel within the rhizomes of giant salvinia, causing them to disintegrate. They also tunnel in the leaf buds and adults eat leaves and leaf buds, suppressing growth and vegetative propagation of this sterile weed. This insect has successfully controlled giant salvinia in 12 countries over 3 continents.

APHIS' review and analysis of the proposed action and its alternatives are documented in detail in an EA entitled, ''Field Release of the Salvinia Weevil, *Cyrtobagous salviniae* Calder and Sands (Curculionidae: Coleoptera) for Control of Giant Salvinia, *Salvinia molesta*

Mitchell (Hydropteridales: Salviniaceae)'' (August 2002). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading DATES at the beginning of this notice.

The EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by following the link for ''Documents/Forms Retrieval System'' then clicking on the triangle beside ''6—Permits—Environmental Assessments,'' and selecting document number 0001. You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies. The EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 28th day of October, 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–27684 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 2003

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On October 25, 2002, the President, Commodity Credit Corporation (CCC), who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that 200,000 metric tons of nonfat dry milk in CCC inventory will be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended (''section 416(b)''), during fiscal year 2003. This amount will be in addition to the 5,450 metric tons that will be shipped overseas during fiscal year 2003 to fulfill commitments made by CCC in agreements entered into by CCC under section 416(b) during fiscal year 2002.

FOR FURTHER INFORMATION CONTACT: William Hawkins, Director, Program Administration Division, FAS, USDA, (202) 720–3241.

Dated: October 28, 2002.

A. Ellen Terpstra,

Vice President, Commodity Credit Corporation.

[FR Doc. 02–27811 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on November 21 and 22, 2002, in Ukiah, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on November 21, 2002, and from 8:30 a.m. to 2:30 p.m. on November 22, 2002, at the Ukiah Valley Conference Center in Ukiah, CA.

ADDRESSES: The meeting will be held at the Chenin Blanc Room of the Ukiah Valley Conference Center, 200 South School Street, Ukiah, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–1137; E-mail *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include (1) Presentations on Mendocino and Six Rivers National Forests' Draft Roads Analysis Process reports; (2) Regional Ecosystem Office (REO) update; (3) Presentation on Survey and Manage Supplemental Environmental Impact Statement; (4) Update on planning for a Province fire ecology/fuels treatment workshop; (5) Aquatic Conservation Subcommittee report; (6) Finalize implementation monitoring reports; (7) Discussion of proposed timber harvest issue; (8) Northwest Forest Plan socio-economic monitoring; (9) 2003 committee meeting dates; (10) Reports from agencies and committee members; and (11) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 15, 2002.

James Fenwood,

Forest Supervisor.

[FR Doc. 02–27702 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Friday, November 15, 2002, from 11 a.m. until 1 p.m. The meeting, which will be held telephonically, will be open to the public. Members of the public interested in attending by telephone should call (toll free) 1–888–899–7785 and, when prompted, enter passcode 1468517. In addition, a bridge to the conference call will be provided at the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC 20503. Limited seating will be available. Reservations are not accepted.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will receive a briefing on the draft National Strategy to Secure Cyberspace and will begin deliberations to formulate comments on the draft to be furnished to the President.

Agenda

I. Introduction of NIAC Members
II. Welcoming remarks—Richard Clarke, Special Advisor to the President for Cyberspace Security; Executive Director, NIAC
III. Welcoming remarks—Richard Davidson, Chairman, NIAC
IV. Briefing on rules and procedures governing Federal advisory committee proceedings and deliberations—Commerce Department, Office of General Counsel Staff
V. Briefing on draft National Strategy to Secure Cyberspace—Critical Infrastructure Protection Board Staff
VI. Discussion of next steps to provide comments on the Strategy and deliberations concerning comments—Mr. Clarke and Mr. Davidson, NIAC

Members

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

For more information contact Wanda Rose on (202) 482–7481.

Dated: October 25, 2002.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 02–27758 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of final results of new shipper review.

EFFECTIVE DATE: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Background

On August 31, 2001 the Department received a timely request for a new shipper review, in accordance with section 751(a)(2)(B) of the Tariff Act and section 351.214(c) of the Department's regulations, from TK Corporation, a producer of stainless steel butt-weld pipe fittings. On October 5, 2001, the Department initiated the new shipper review. *See Stainless Steel Butt-Weld Pipe Fittings from Korea: Notice of Initiation of New Shipper Antidumping Duty Review,* 66 FR 51017 (October 5, 2001).

On April 3, 2002 the Department extended the time limit for completion of the preliminary results of new shipper review. *See Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea,* 67 FR 15793 (April 3, 2002). We published our preliminary results on July 17, 2002. *See Preliminary Results of New Shipper Review,* 67 FR 46953 (July 17, 2002).

Extension of Time Limit for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act, requires the Department to make a final determination within 90 days after the date on which the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 90-day period to 150 days. In this case, questions have arisen regarding the best method of liquidating the respondent's entries. Due to the need to analyze this question, the Department is extending, in accordance with section 751(a)(3)(A) of the Tariff Act, the time limit for the final results by 60 days, until no later than December 7, 2002, or the first workday thereafter.

This notice is published in accordance with section 751(a)(2)(B)(iv) of the Tariff Act.

Dated: October 25, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27711 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On October 15, 2002 the NAFTA Panel issued its decision in the matter of Pure and Alloy Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–07.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the Full Sunset Review made by the International Trade Administration respecting Pure Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41436). The request was assigned File No. USA–CDA–00–1904–07.

Panel Decision: The Panel affirmed the remand determination in part and remanded in part. The panel specifically instructed the DOC on remand to determine whether Magcorp had shown ''good cause'' for DOC to consider Magcorp's allegations of newly provided counteravailable subsidies made to Magnola pursuant to section 752(b)(2)(B) of the statute, 19 U.S.C. 1675a(b)(2)(B). The panel affirmed the DOC on this issue. The panel also remands the matter to DOC with instructions to amend its determination

by removing the reporting of an all others subsidy rate.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The determination on remand shall be issued within forty-five (45) days of the date of the Order (not later than November 29, 2002).

Dated: October 17, 2002.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 02–27708 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews: Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On October 15, 2002 the NAFTA Panel issued its decision in the matter of Pure Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–06.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determinations to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules are published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the Full Sunset Review made by the International Trade Administration respecting Pure Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41,436). The request was assigned File No. USA–CDA–00–1904–06.

Panel Decision: The Panel remanded this matter back to the Department (i) for further consideration of the record concerning the ''other factors'' which are required to be taken into account pursuant to our conclusion in Sections 2 and 3 of this opinion; (ii) to reconsider whether the normal preference for the investigation rate should not be followed here.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The determination on remand shall be issued within sixty (60) days of the date of the Order (not later than December 16, 2002).

Dated: October 17, 2002.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 02–27707 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–GT–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Tuesday, November 19, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–27871 Filed 10–30–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Federal Acquisition Regulation; Submission for OMB Review; Federal Acquisition and Community Right-To-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal acquisition and community right-to-know. A request for public comments was published in the **Federal Register** at 67 FR 20743 on April 26, 2002. No comments were received.

DATES: Submit comments on or before December 2, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), ''Federal Acquisition and Community Right-to-Know,'' and the Environmental Protection Agency's ''Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting'' (60 FR 50738, September 29, 1995). The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they

will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109).

B. Annual Reporting Burden

Respondents: 167,487.
Responses Per Respondent: 1.
Annual Responses: 167,487.
Hours Per Response: 0.50.
Total Burden Hours: 83,744.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: October 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–27710 Filed 10–30–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army: Corps of Engineers

Availability Draft Environmental Impact Statement for the Operation and Maintenance of Lake Sidney Lanier, GA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of the Draft Environmental Impact Statement (DEIS) for the Operation and Maintenance of Lake Sidney Lanier, GA. Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (USACE), Mobile District (Corps), has prepared a DEIS to address activities performed by the Corps to operate and maintain Lake Sidney Lanier which is formed by Buford Dam. The Department of the Army, Corps of Engineers, published a notice of intent in the **Federal Register** (66 FR 20639, April 24, 2001) stating its intent to prepare a DEIS for Operation and Maintenance of Lake Sidney Lanier, GA. This DEIS is being made available for a 45-day public comment period.

DATES: A public meeting for receiving comments on the DEIS and the Shoreline Management Plan addressed by the DEIS will be held on November 25, 2002, at Gainesville College, Continuing Education Building, Gainesville, GA. Written comments on the DEIS should be submitted on or before December 23, 2002.

ADDRESSES: Submit written comments to District Engineer, U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, AL 36628–0001 or by fax (251) 690–2727. Electronic comments can also be submitted via the web site established for the Lake Lanier EIS effort: *http://www.usacelakelaniereis.net.*

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the DEIS should be addressed to Mr. Glen Coffee, Environment and Resources Branch, P.O. Box 2288, Mobile, AL 36628–0001 telephone 251–690–2729, or e-mail: *glendon.1.coffee@sam.usace.army.mil.*

SUPPLEMENTARY INFORMATION: This DEIS is being prepared to analyze the potential environmental effects of the USACE proposal to continue the ongoing operation and maintenance activities necessary for recreation, natural resources management, and shoreline management, and to implement specific improvements in these operation and maintenance programs to better manage the project on a sustainable basis. These activities will be performed within the context of operations to satisfy the flood control, hydropower generation, navigation, and water supply purposes of the Buford Dam project. The purpose of the proposed action is to accomplish congressionally authorized project purposes while balancing permitted private uses; community, social, and economic needs; and sound environmental stewardship. The proposed action reflects two levels of activity: (1) The minimal measures necessary for operation and maintenance of Lake Lanier to meet current USACE standards and (2) proposed program improvements, which include a large array of actions designed to enhance the environmental quality of the project and to provide for the long-term use and environmental sustainability of project resources.

Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile or electronic methods, comments (written) may also be presented at the public meeting (*see* **DATES**). Additional information on this meeting will be mailed in a public notice to the agencies and public, and announced in news releases.

Robert B. Keyser,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–27717 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability for the Final Environmental Impact Statement for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study, Middlesex County, NJ

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New York District, announces the availability of the final Environmental Impact Statement (EIS) for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The document was prepared following a public review and comment period on the draft EIS, during which a public hearing was held in South River, New Jersey to provide stakeholders with an opportunity to provide oral and written comments.

FOR FURTHER INFORMATION CONTACT: Dr. Josephine R. Axt, Project Restoration Biologist and Team Leader, Planning Division, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, 21st floor, New York, NY, 10278–0090 at (212) 264–5119 or e-mail: *Josephine.R.Axt@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The South River, Raritan River Basin Multipurpose Final Integrated Feasibility Study/Environmental Impact Statement (IFS/EIS) presents the results of an investigation to determine the feasibility of hurricane and storm damage reduction (HSDR) and ecosystem restoration along the South River in Middlesex County, NJ. The IFS/EIS has been conducted by the Corps in conjunction with the non-Federal project partner, the New Jersey Department of Environmental Protection (NJDEP).

The study area includes flood-prone areas within the Boroughs of South River and Sayreville, the Township of Old Bridge, and the Historic Village of Old Bridge (located within the

Township of East Brunswick) in New Jersey. The downstream river reaches encompass virtually all the flood-prone structures in the watershed and the areas of greatest ecological degradation (and greatest potential for ecosystem restoration).

The costs of project implementation for the HSDR features and ecosystem restoration features will be shared by the Federal government and the non-Federal project partner (NJDEP) on a 65 percent/35 percent basis. All operations and maintenance costs will be borne by the non-Federal project partner. For the HSDR features, the project implementation costs ($61,066,800) will be shared as follows: $39,693,400 Federal and $21,373,400 non-Federal with annual O&M costs of $221,500 (non-Federal). This includes mitigation costs associated with the implementation of these features ($2,865,300 total with $1,862,400 Federal and $1,002,900 non-Federal). For the ecosystem restoration features, the project implementation costs ($53,097,700) will be shared as follows: $34,513,500 Federal and $12,811,400 non-Federal with O&M costs of $80,000 (non-Federal).

The construction and maintenance of both the HDSR features and the ecosystem restoration features will not adversely affect any Federally or state listed endangered or threatened species, areas of designated critical habitat, or essential fish habitat. By providing increased cover and opportunities for foraging and nesting, the selected plans will also improve habitat for the Federally listed threatened bald eagle thought to utilize habitats in the general vicinity, and for many of the State of New Jersey endangered and threatened species observed in the restoration area (*e.g.,* black skimmer, northern harrier, peregrine falcon, yellow-crowned night heron, osprey, black-crowned night heron, and American bittern).

At this time, there are no known major areas of controversy regarding the study and selected plan among agencies or the public interest. One unresolved issue is an air conformity determination. The General Conformity provisions relating to the Clean Air Act require a conformity demonstration for each pollutant where the total direct and indirect emissions from the Federal action exceed the corresponding de minimis level.

Based on preliminary estimates, using emissions estimates generated from similar activities for other projects, total direct and indirect NO_X emissions appear to exceed the de minimis threshold of 25 tons per year. The preliminary projected total direct and indirect VOC and CO emissions from the proposed project are estimated to be below the de minimis threshold levels. In close consultation with the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection, the Corps will conduct a detailed, comprehensive quantitative analysis in the next project phase (Preconstruction, Engineering and Design, in Fall 2002) to more precisely quantify all emissions from the South River Project and to determine conformity accordingly. Upon completion of the revised emission estimates, a Draft General Conformity Determination will be prepared and undergo formal agency and public review. Results and conclusions of this process will be part of the South River Project's Record of Decision, including, as necessary, detailed analyses of mitigation alternatives, such as emission offsets, emission credits, emission reduction technologies, and operational modifications to reduce emissions.

In sum, the recommended plan will efficiently reduce hurricane and storm damages along the South River and improve the structure and function of degraded ecosystems in the study area. The non-Federal project partner, NJDEP, has indicated its support for the recommended plan and is willing to enter into a Project Cooperation Agreement with the Federal Government for the implementation of the plan.

The public review period for the final IFS/EIS is from November 1, 2002 to December 2, 2002 or 30 days after the Notice of Availability is published in the **Federal Register**. Comments should be directed to Dr. Axt at the address above.

The Final IFS/EIS is available for review at the following locations:

(1) Sayerville Free Public Library, 1050 Washington Road, Parlin, NJ 08859.

(2) Old Bridge Township Library, 1 Old Bridge Plaza #1, Old Bridge, NJ 08857.

(3) South River Library, 55 Appleby Avenue, South River, NJ 08882.

(4) East Brunswick Library, 2 Civic Center Driver, East Brunswick, NJ 08816.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27718 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the PCS Phosphate Mine Continuation, Aurora, Beaufort County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: PCS Phosphate Company, Inc., has applied for a Department of the Army permit to adversely impact 2,394 acres of wetlands to continue its surface mining operation on Hickory Point, adjacent to South Creek and its tributaries, near Aurora, in Beaufort County, North Carolina. The Draft Environmental Impact Statement (DEIS) will evaluate several alternatives to the proposed action including the No Action alternative. A Public Notice describing the project was issued on October 4, 2001 and was sent to all interested state and Federal resource agencies as well as the general public.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. David Lekson, Chief, Washington Regulatory Field Office, U.S. Army Engineer District, Wilmington; Post Office Box 1000; Washington, DC 27889–1000; at (252) 975–1616, extension 22.

SUPPLEMENTARY INFORMATION: On August 27, 1997, PCS Phosphate was issued a Department of the Army (DA) permit to discharge adversely impact 1,268 acres of waters and wetlands to continue its mining operation pursuant to Alternative ''E'', more fully described in the final Environmental Impact Statement for the project, dated August 1996.

On November 2, 2000, PCS Phosphate applied for DA authorization to continue its mining advance on the Hickory Point peninsula once reserves are depleted within Alternative ''E''. On January 9, 2001, a Public Notice describing this proposal was circulated. According to the application, 2,530 acres of wetlands and 49 acres of open waters including navigable waters would be adversely impacted by the proposed mining advance. In response to comments received from the January 9, 2001, Public Notice and from the initial scoping comments received from the general public, State, Federal, and local agencies, PCS Phosphate elected to revise their application to reduce impacts to open waters and navigable waters as shown in the following table:

Proposed impacts	Number of acres
1. Creeks/Open Water	4
2. Brackish Marsh Complex	35
3. Bottomland Hardwood Forest	120
4. Disturbed-Herbaceous Assemblage	207
5. Disturbed-Scrub-Scrub Assemblage	581
6. Pine Plantation	745
7. Hardwood Forest	209
8. Mixed Pine-Hardwood Forest	314
9. Pine Forest	100
10. Ponds	19
11. ''47% wetland'' area	60
Total	2,394

Additionally, 1,028 acres of upland habitat are included in the mine continuation area for a total of 4,422 acres of disturbance.

Preliminary alternatives are currently being identified and include the applicant's proposal, additional avoidance alternatives on Hickory Point and mine blocks located in the area south of Aurora.

The applicant's stated purpose and need for the proposed work is to continue mining its phosphate reserve in an economically viable fashion. More specifically, this is defined as a long term (approximately 20 year) systematic and cost effective mine advance within the project area for the on-going PCS Phosphate mine operation near Aurora, NC. This application is being considered pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The Wilmington District will periodically issue additional Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed. It is also anticipated that a Public Hearing will be held to gather additional comment on the project. No date has been identified for the Public Hearing.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27720 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Evaluating the Placement of Dredged and Fill Material in the Jurisdictional Wetlands on the Protected Side of the West Bank Hurricane Protection Levee, Jefferson Parish, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New Orleans District, at the request of the Parish of Jefferson, State of Louisiana, is initiating this study under the authority of the Clean Water Act, 33 U.S.C. 1251, *et seq.*, and the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.* In May 2000, the Parish of Jefferson, State of Louisiana, applied for a 404 Permit for the development of those areas deemed jurisdictional under the Clean Water Act which lie on the protected side of the West Bank Hurricane Protection Levee. The public notice was issued on June 19, 2001. The public comment period closed on or about July 29, 2001. As a result of the comments received and after consultation between the Corps and Jefferson Parish, it has been determined that an Environmental Impact Statement (EIS) ought to be prepared.

FOR FURTHER INFORMATION CONTACT: Questions concerning the EIS should be addressed to Mr. Michael Salyer at U.S. Army Corps of Engineers, PM-RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2037, fax number (504) 862–2572 or by E-mail at *michael.r.salyer@mvn02.usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The proposed action would authorize the placement of dredged and fill material in the jurisdictional wetlands on the protected side of the West Bank Hurricane Protection Levee, in the area described in the Parish's 404 Permit Application as the Barataria Corridor. This would allow for the implementation of the Parish's Comprehensive Land Use Plan and reduce the need for individual 404 permits to be submitted for every action but expedite the process by covering the entire Barataria Corridor with one permit action.

2. *Alternatives.* The alternative presently being considered is the no action alternative, which would leave in place the current parcel-by-parcel permitting activity.

3. *Scoping.* Scoping is the process for determining the scope of alternatives and significant resources and issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in November of 2002. The meeting will be held in the vicinity of Marrero, LA. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. *Significant Resources.* The tentative list of resources and issues to be evaluated in the EIS includes tidal wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. Coordination will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. *Estimated Date of Availability.* Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available in the spring of 2004.

Dated: October 15, 2002.

Peter J. Rowan,

Colonel, U.S. Army, District Engineer.

[FR Doc. 02–27721 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Millstone River Basin, New Jersey Flood Control and Ecosystem Restoration Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, announces its intent to prepare a Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA), in accordance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA and the Department of the Army, USACE Procedures for Implementing NEPA, to assess the environmental impacts of a proposed flood control and ecosystem restoration study in the Millstone River Basin in New Jersey. This study is authorized by a resolution of the Committee on Transportation and Infrastructure, U.S. House of Representatives, adopted August 5, 1999. The purpose of this study is to identify and evaluate possible solutions for flood control and ecosystem restoration and to determine the extent of Federal interest.

DATES: Public scoping meeting on November 14, 2002, 7:30 PM —9:00 PM, to be held at the Borough of Manville Courtroom, 325 North Main Street, Manville, New Jersey, 08835.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Ms. Megan B. Grubb, (212) 264–5759, U.S. Army Engineer District, New York, Planning Division, Attn: CENAN–PL–EA, 26 Federal Plaza, New York, NY 10278–0090.

SUPPLEMENTARY INFORMATION:

1. Project Location

This notice announces the initiation of a feasibility phase study for flood control and ecosystem restoration purposes at Millstone River Basin, New Jersey. This study area is located in parts of the New Jersey counties of Mercer, Middlesex, Monmouth, Hunterdom, and Somerset, and is bounded on the north by Morris County, on the east by Middlesex County, on the west by Hunterdon County and on the south by Mercer County. The study area is located in north-central New Jersey halfway between Philadelphia and New York City. The project study area consists of approximately 238 square miles of developed commercial and residential buildings as well as natural habitat.

2. Project Authorization and History

The Millstone River Basin Study is authorized by a resolution of the Committee on Transportation and Infrastructure, U.S. House of Representatives, adopted August 5, 1999. The USACE completed an initial Reconnaissance report entitled ''Millstone River Basin, New Jersey—Reconnaissance Study For Flood Control & Ecosystem Restoration'' in September 2000. This report determined that there may be potential Federal interest in flood control and ecosystem restoration measures for the Millstone River Basin. Additional investigations have demonstrated Federal interest and the need for further study of the Millstone River Basin area, in the nature of a detailed feasibility study. The non-Federal sponsor, the New Jersey Department of Environmental Protection (NJDEP) signed an agreement on 14 March 2002 to equally share the cost of the feasibility study with the USACE. The NJDEP in turn will act on behalf of all other local municipalities and jurisdictions as the primary non-Federal sponsor.

3. Project Need

The Millstone River Basin has a history of severe flood damages. Low-lying residential and commercial structures in the area are experiencing flooding caused by intense thunderstorms, northeasters, and hurricanes. Evaluation of flooding problems in the Millstone River basin has identified the Borough of Manville as the most significant problem area in the Basin. Manville was selected for detailed consideration in this feasibility investigation. A number of improvement measures would be evaluated during the feasibility study. These may include such measures as: floodwalls, levees, pump stations, gates and ecological enhancement. Non-structural measures such as flood proofing, ring walls, raising or acquisitions will also be considered.

The Millstone River Basin has a significant problem with ecosystem degradation. The structure and function of the natural systems in the Basin and the Millstone River's ability to perform critical local and regional ecological functions have been greatly reduced due to change in land use patterns and practices. A number of improvement measures would be evaluated during the feasibility study. The types of ecosystem restoration projects to be formulated could include: Lake Restoration and Watershed Management, Comprehensive Riparian System Restoration, Disturbed Land Restoration, and Ecological Enhancement in association with a Flood Control Project.

4. DEIS Scope

The intended DEIS will evaluate the potential environmental and cultural resources impacts associated with the proposed alternatives for flood control and ecosystem restoration.

5. Public Involvement

The USACE has scheduled a public environmental scoping meeting for November 14, 2002 (*see* **DATES**) to discuss the scope of the DEIS and data gaps. The public scoping meeting place, date and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. The public will have an opportunity to provide written and oral comments at the public scoping meeting. Written comments may also be submitted via mail and should be directed to Ms. Megan B. Grubb at the address listed above. The USACE plans to issue the DEIS in the spring of 2005. The USACE will announce availability of the draft in the Federal Register and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments, which will be addressed in the final EIS.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27719 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Providing a Deeper and Wider Navigation Channel to the Port of Iberia Through the Enlargement of Existing Access Channels, in Vermilion and Iberia Parishes in the Vicinity of New Iberia and Intracoastal City, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New Orleans District, is initiating this study under the authority of section 431 of the Water Resources Development Act of 2000 (Pub. L. 106–541), dated December 11, 2000, to determine the feasibility of deepening and widening the navigation channel to the Port of Iberia (hereafter referred to as ''the Port'') through the enlargement of existing access channels. Deepwater oil and gas exploration and development in the Gulf of Mexico and other deepwater areas has increased because of growth in demand; depletion of existing oil and gas fields, including those in the shallower areas of the gulf; and advancements in deepwater drilling technologies that include larger platforms. The Port was constructed by Iberia Parish to provide a navigation outlet for trade and transportation of offshore fabrication modules. South Louisiana and the Port have a long association with the development of offshore oil and gas industry worldwide. The Port is primarily a landlocked port with connections to the Gulf of Mexico through the Commercial Canal and the Acadiana Navigation Channel. Additionally, the current project provides a ''Harbor of Refuge'' during storms and hurricanes. Five major waterways service the Port: the Gulf Intracoastal Waterway, the Atchafalaya River, the Acadiana Navigation Channel, the Vermilion River Cutoff, and the Freshwater Bayou. The Port's access channel, the Commercial Canal is essentially the northernmost portion of the Acadiana Navigation Channel.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Environmental Impact Statement (EIS) should be addressed to Mr. Michael Salyer at U.S. Army Corps of Engineers, PM–RS, PO Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2037, fax number (504) 862–2572 or by E-mail at *michael.r.salyer@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The proposed action would provide for the enlargement of the existing navigation channels to the Port via the Commercial Canal to the Gulf Intracoastal Waterway (GIWW) to Freshwater Bayou to the Gulf of Mexico via a bypass channel at the existing Freshwater Bayou lock. The proposed project bottom depth is to 20 foot MSL from the current 13 feet MSL in Commercial Canal, and to 20 foot MSL from the current 12 foot MSL in the GIWW and Freshwater Bayou. The channel alignments and bottom widths would be increased to 150 feet from the current 115 feet where necessary in the areas of the Port as a result of existing bulkheads. The Commercial Canal, GIWW, and Freshwater Bayou widths would be increased to 200 feet from the current 125 feet. It was assumed that the 250-foot width of the Freshwater Bayou Bar Channel into the Gulf of Mexico would remain the same. The Freshwater By-Pass would be widened to 150 feet from the current 125 feet. A 20-foot project depth was the only depth evaluated for the reconnaissance analysis. The material dredged for the construction and maintenance of the channels would be used for bank-line stabilization and wetlands restoration and construction, to the maximum extent practicable. Economic and environmental analysis would be used to determine the most practical plan, which would provide for the greatest overall public benefit.

2. Alternatives. Alternatives recommended for consideration presently include the construction of deeper and wider channels in the Commercial Canal, GIWW, and Freshwater Bayou. Incremental reaches of those channels with separable benefits and cost would be investigated. Various project depths for navigation channels would also be investigated.

3. Scoping. Scoping is the process for determining the scope of alternatives and significant resources and issues to be addressed in the Environmental Impact Statement. For this process, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in November of 2002. The meeting will be held in the vicinity of Abbeville, LA. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. Significant Resources. The tentative list of resources and issues to be evaluated in the EIS includes tidal wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. Environmental Consultation and Review. The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Coordination will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. Estimated Date of Availability. Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available is in the spring of 2004.

Dated: October 15, 2002.

Peter J. Rowan,

Colonel, U.S. Army District Engineer.

[FR Doc. 02–27722 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–84–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Naval Sea Systems Command; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Naval Sea Systems Command published a document in the **Federal Register** of October 11, 2002, concerning request for comments on a list of facilities available for the construction or repair of ships. The document contained incorrect telephone numbers and an incorrect address.

FOR FURTHER INFORMATION CONTACT: Sherrell Smith, (202) 781–1819.

Correction

In the **Federal Register** of October 11, 2002, in FR Doc. 02–25935, on page 63388, in the second column, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Send written comments and recommendations on the proposed information collection to Commander, Naval Sea Systems Command (SEA 04X13), 1333 Isaac Hull Ave SE Stop 4030, Washington Navy Yard, DC 20376–4030.

FOR FURTHER INFORMATION CONTACT: Sherrell Smith at (202) 781–1819 or Leonard Thompson at (202) 781–1832, respectively, to request additional information or to obtain a copy of the proposal and associated collection instruments.

Dated: October 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–27671 Filed 10–30–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Universal Guardian Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Universal Guardian Corporation a revocable, non-assignable, exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent No. 6,145,441, entitled ''Frangible Payload Dispensing Projectile,'' issued November 14, 2000, Navy Case No. 78,561.

DATE: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESS: Written objections are to be filed with Coastal Systems Station, Dahlgren Div, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646, fax (850) 235–5497, or E-Mail at *gilbertha@ncsc.navy.mil.*

SUPPLEMENTARY INFORMATION: The Notice of Intent to grant an exclusive license for this patent, which was previously advertised in the **Federal Register** on July 10, 2002 (67 FR 45709–45710), has been cancelled.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: October 22, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–27672 Filed 10–30–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Hispanic Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2003

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, HSIs are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS and SSS Programs are authorized under Title IV of the HEA; the UISFL Program is authorized under Title VI of the HEA.

Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A or Title V Programs.

Special Note: To become eligible, your institution must satisfy a criterion related to needy student enrollment and one related to Educational and General (E&G) expenditures for a particular base year. Because we changed the collection processes for determining the thresholds for these criteria, we do not have base year data beyond 1999–2000. In order to award FY 2003 grants in a timely manner, we will use threshold data from base year 1999–2000 rather than a later base year. In completing your eligibility application, therefore, you are to use data from the base year 1999–2000.

Eligible Applicants: To qualify as an eligible institution under the Title III Part A or Title V Programs, an accredited institution must, among other requirements, have a high enrollment of needy students, and its E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements for the HSI Program are found in 34 CFR 606.2–606.5. The complete eligibility requirements for the Title III Part A Programs are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/legislation/FedRegister/finrule/1999–4/121599a.html.*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1999–2000 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational and Expenditures per Full-Time Equivalent Student: An institution should compare its 1999–2000 E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's E&G expenditures for the 1999–2000 base year are less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year, 1999–2000, for the four categories of comparable institutions:

Type of institution	Median Pell grant percentage	Average E&G per FTE
2-year Public Institutions	18.9	$8,348
2-year Non-Profit Private Institutions	31.0	20,101
4-year Public Institutions	23.5	19,516
4-year Non-Profit Private Institutions	23.4	30,152

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b) and 607.4(c) and (d). Institutions requesting a waiver of the needy student or the E&G expenditures requirement must include the detailed information as described in the instructions for completing the application.

The needy student requirement waiver authority, provided in 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refers to ''low-income'' students and families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level in the 1999–2000 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table provides the low-income levels for the various sizes of families:

1999 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and Outlying	Alaska	Hawaii
1	$12,360	$15,480	$14,235
2	16,590	20,760	19,095
3	20,820	26,040	23,955
4	25,050	31,320	28,815
5	29,280	36,600	33,675
6	33,510	41,880	38,535
7	37,740	47,160	43,395
8	41,970	52,440	48,255

For family units with more than eight members, add the following amount for each additional family member: $4,230 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,280 for Alaska; and $4,860 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on March 18, 1999 (64 FR 13428–13430).

In reference to the waiver option specified in 606.3(b)(4) and 607.3(b)(4) of the regulations, information about ''metropolitan statistical areas'' may be obtained by requesting the Metropolitan Statistical Areas, 1999, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: November 1, 2002.

Deadline for Transmittal of Eligibility Applications: January 31, 2003 for institutions that wish to apply for FY 2003 new grants under the Title III Part A or the Title V Programs; May 23, 2003 for institutions that wish to apply only for cost-sharing waivers under the FSEOG, FWS, SSS or UISFL Programs; January 31, 2003 for institutions that wish to apply for both a grant under the Title III Part A Programs or the Title V Program and a waiver of the cost sharing requirements under the FSEOG, FWS, SSS or UISFL Programs.

Electronic Submission of Applications: For FY 2003, we are again offering institutions the option of submitting their Designation of Eligibility application in hard copy or sending it electronically to our eligibility Web site at: *http://webprod.cbmiweb.com/Title3and5/index.html.*

To enter the Web site, you must use your institution's unique 8-digit identifier, *i.e.*, your Office of Postsecondary Education Identification Number (OPE ID number). If you receive a hard copy of the eligibility application and instructions from us in the mail, look for the OPE ID number on the address label. Otherwise, your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have that OPE ID number, contact a Department of Education staff member using the e-mail address located at the end of the web page or the contact persons' telephone numbers or e-mail addresses included in this notice.

You will find detailed instructions for completing the form electronically under the ''eligibility 2003'' link at either of the following Web sites: *http://www.ed.gov/offices/OPE/HEP/idues/title3a.html* or *http://www.ed.gov/hsi.*

We encourage applicants to complete their form electronically and to complete it as soon as possible. For institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement and wish to request a waiver of one or both of those

requirements, you may complete your designation application form on-line, print the form, and attach your narrative waiver request(s) to the printed form and mail both to the address in the next paragraph.

Mail your Designation of Eligibility application request to: Ms. Darlene B. Collins, Team Leader, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., Room 6032, Request for Eligibility Designation, Washington, DC 20202–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for the Title III Part A Programs in 34 CFR part 607, and for the Title V Program in 34 CFR part 606.

For Applications and Further Information Contact: Thomas M. Keyes, Margaret A. Wheeler or Ellen Sealey, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, Room 6049, Request for Eligibility Designation, Washington, DC 20202–8513. Mr. Keyes' telephone number is (202) 502–7577. Ms. Wheeler's telephone number is (202) 502–7583. Ms. Sealey's telephone number is (202) 502–7580. Mr. Keyes, Ms. Wheeler and Ms. Sealey may be reached via Internet: *thomas.keyes@ed.gov*, *margaret.wheeler@ed.gov*, *ellen.sealey@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, audio tape, or computer diskette) on request to the contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the 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: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Dated: October 28, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–27697 Filed 10–30–02; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0218; FRL–7278–2]

Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients (EPA ICR No. 0597.08, OMB Control No. 2070–0024). This is a request to renew an existing ICR that is currently approved and due to expire January 31, 2003. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2002–0218, must be received on or before December 30, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a business engaged in the manufacturing of pesticides and other agricultural chemicals. Potentially affected entities may include, but are not limited to:

• Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., Businesses engaged in the manufacture of pesticides and who file a petition asking the Agency to take a specific tolerance action.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Food Quality Protection Act of 1996, and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0218. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

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

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

C. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 6094 for a copy of the ICR.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0218. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0218. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0218.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0218. 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. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

C. What Should I Consider when I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients.

ICR numbers: EPA ICR No. 0597.08, OMB Control No. 2070–0024.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire January 31, 2003.

Abstract: This information collection will enable EPA to collect adequate data to support the establishment of pesticide tolerances pursuant to section 408 of the FFDCA. A pesticide may not be used on food or feed crops unless EPA has established a tolerance for the pesticide residues on that crop, or established an exemption from the requirement to have a tolerance.

It is EPA's responsibility to ensure that the maximum residue levels likely to be found in or on food/feed crops are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, it must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. Once the data are deemed adequate to support the findings, EPA will establish the tolerance or grant an exemption from the requirement of a tolerance.

V. What Are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 258,900 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Businesses engaged in the manufacturing of pesticides and other agricultural chemicals who file a petition asking the Agency to take a specific tolerance action.

Estimated total number of potential respondents: 2,100.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 3–5.

Estimated total annual burden hours: 258,900.

Estimated total annual burden costs: $23,435,700.

VI. Are There Changes in the Estimates From the Last Approval?

The total estimated annual respondent cost for this ICR has increased $1,305,700 (from $22,130,000 to $23,435,700), due mainly to the update in the loaded hourly labor rates used to calculate the costs. This increase is explained more fully in the ICR.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 23, 2002.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–27704 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–9]

Notice of Request for Initial Proposals (IPs) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting Initial Proposals (IPs) from States, Tribes, local governments, universities, non-profits, and other eligible entities interested in applying for Federal assistance for Water Quality Cooperative Agreements (CFDA 66.463) under the Clean Water Act (CWA) section 104(b)(3). EPA Headquarters intends to award an estimated $3.1 million to eligible applicants through assistance agreements ranging in size from $10,000 up to $500,000 for Water Quality Cooperative Agreements, which are for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. From the IPs received, EPA estimates that 30 to 35 projects may be selected to submit full applications.

The Agency intends to make available at least $200,000 per year of the annual appropriation for Water Quality Cooperative Agreements, from FY 2001 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies. For FY 2003 it is expected that $250,000 will be available for projects addressing cooling water intake issues.

The Agency reserves the right to reject all IPs and make no awards.

DATES: EPA will consider IPs received on or before 5 p.m. Eastern Time, December 30, 2002. IPs received after the due date, may be reviewed at EPA's discretion.

ADDRESSES: It is preferred that IPs be electronically mailed (E-mailed) to *WQCA2003@EPA.GOV*. If mailed through the postal service or other means, three copies should be sent to: Barry Benroth, 4204M, WQCA2003, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The following address must be used for delivery of the copies by an overnight delivery or courier service: Barry Benroth, 4204M, WQCA2003, Phone 202–564–0672, U.S. Environmental Protection Agency, Room 7324 J, EPA East, 1201 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Barry Benroth by telephone at 202–564–0672 or by E-mail at *benroth.barry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of This Request Is for Initial Proposals

The Office of Wastewater Management, Office of Water at EPA Headquarters is requesting IPs from States, Tribes, local governments, non-profit organizations and other eligible entities under the Clean Water Act section 104(b)(3) for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

An organization whose IP is selected for possible Federal assistance must complete and EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, see 40 CFR 30.12 and 31.10).

Organizations who have an existing agreement under this program are eligible to compete with proposals for new awards.

The Office of Wastewater Management, Office of Water, EPA Headquarters Has Identified the Following High Priority Areas for Consideration

WQCAs awarded under section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, ''demonstrations'' are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished through the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

The Office of Wastewater Management at EPA Headquarters has identified several subject areas for priority consideration. EPA will award WQCAs for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution in the following subject areas:

Impacts of Wet Weather Flows

Trends in load reduction due to implementation of storm water

Best Management Practices (BMPs) including means of measuring effectiveness of BMPs

Storm water monitoring techniques

Efficient and effective reduction of Sanitary Sewer Overflows (SSO)

Impacts of sewage overflows

Impacts of peak wet weather flows on Publicly Owned Treatment Works (POTW)

Environmental effectiveness of sewer separation

Compliance with Storm Water Phase II

National Pollutant Discharge Elimination System (NPDES) Program Strategies To Implement Watershed-Based Efforts

Watershed Integration of Water Programs under CWA & Safe Drinking Water Act (SDWA)

Alternative markets or treatments for excess manure

Nutrient loading reduction through trading

Ballast Water Treatment

On-board treatment or marine disposal technologies for various ships
Sediments that have collected in ballast tanks
Fate and transport in marine, estuary, and fresh water systems of any use of biocides (*e.g.* chlorine derivatives) to treat ballast water

Onsite/Decentralized Wastewater Treatment Systems

Effective State-level adoption of EPA management guidelines in reducing water pollution
Institutional, regulatory and funding barriers and solutions to implementation of decentralized options
Tools for conducting comprehensive, watershed-wide assessments of risks associated with decentralized wastewater systems

Management Systems for Water Pollution Control Programs Asset Management

Strategic best practice governance and business models of asset management
Methodologies and best practice applications and approaches for asset management
Tools and techniques for incorporating asset management into the day-to-day management of utilities
Municipal water efficiency and water demand management for infrastructure cost reduction or water pollution prevention

Environmental Management Systems for Water Pollution Control

Public Agency and Agriculture EMSs
Integrated utility-wide EMSs that also incorporate asset management, bench marking, and other management tools

Program Innovations

Program and management efficiencies and innovations in such areas as permit issuance, data collection/submission, program integration, water quality standards development, TMDLs, monitoring, inspections, and compliance
Innovative approaches to address operations and maintenance (O&M) issues for small communities, including tribes
Innovative approaches or methods to help communities and tribes build capacity to develop and manage water quality/wastewater programs
Innovative pretreatment tools or pilot projects for program development and implementation for disadvantaged communities, including the Mexican Border
Tools for environmental/public health improvements on the U.S./Mexican Border on a watershed basis

Wastewater Infrastructure Security

Innovative approaches or methods to reduce risk of terrorist or other attacks in: handling and storage of hazardous chemicals used at WWTPs; general WWTP site security at main and remote locations; wireless control systems (SCADA); sanitary or storm sewer collection systems
Early detection of chemical or biological agents which could contaminate or disrupt the WWTP
Ability of conventional or innovative WWTP processes to treat, remove or render harmless biological, chemical, or radiological agents which could be introduced into the collection or treatment system

Cooling Water Intake Structures (Clean Water Act, Section 316(b))

Reduction of impingement and entrainment of aquatic organisms into cooling water intakes
Ecological effects of cooling water intake structures on aquatic environments
Effectiveness of ecological restoration activities in reducing the impact of cooling water intake structures on the aquatic environment

EPA may also consider other project areas for funding to the extent authorized by CWA section 104(b)(3) and to the extent funds are available for such project areas.

Statutory Authority, Applicable Regulations, and Funding Level

Water Quality Cooperative Agreements are awarded under the authority of section 104(b)(3) of the Clean Water Act section 104(b)(3), (33 U.S.C. 1254(b)(3)).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR part 30 (for institutions of higher learning, hospitals, and other non-profit organizations) and 40 CFR part 31 and 40 CFR part 35, subparts A and B (for States, Tribes, local governments, intertribal consortia, and interstate agencies).

Intergovernmental Review

Applicants requested to submit a full application will be required to comply with Intergovernmental Review requirements (40 CFR part 29).

Total funding available for award by Headquarters will depend on EPA's appropriation for Fiscal Year 2003; however, it is estimated that $3.1 million will be available for funding approved projects. The average size of an award is anticipated to be approximately $100,000.

Should funding available for award remain reasonably stable or increase in future years, the Agency intends to reserve $200,000 per year of the annual amount available for Fiscal Year 2004 and 2005 to support projects and studies on cooling water intake structures. This is an addition to the $600,000 made available or planned for FY 2001 through FY 2003.

Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land are not eligible for funding under this program. New or on-going programs to implement environmental controls are not eligible for funding under this program.

Request For Initial Proposal Format and Contents

IPs should be limited to three pages. Full application packages should not be submitted at this time. It is recommended that confidential information not be included in the IP. The following format should be used for all IPs:

Name of Project:

Point of contract: (Individual and Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the number and status of the current grant or cooperative agreement):

Proposed Award Amount:

Proposed Awardee Cost Share: (Cost sharing is not required).

Description of General Budget Proposed to Support Project:

Project Area: (based on areas of interest shown above).

Project Description: (Should not exceed two pages of single-spaced text).

Expected Accomplishments or Product, with Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA IP Evaluation Criteria

EPA will award Water Quality Cooperative Agreements on a competitive basis and evaluate IPs based on the following criteria:

- The relationship of the proposed project to the priorities identified in this notice.
- How well the project proposes to address a nationally important need, issue, or interest.

• Communication plan to transfer results of the project to other potentially interested parties.

• How well the project furthers the goal of the Clean Water Act to prevent, reduce, and eliminate water pollution.

• Leverage of other resources (*e.g.,* cost share, participation by other organizations) as part of the proposed approach.

• Cost effectiveness of the proposal.

• Compliance with directions for submittal contained in this notice.

The IPs will be evaluated by EPA staff on a scale of 1 to 5 with 1 being low and 5 being high. The criteria above will have essentially equal weight. EPA may consider EPs even if all criteria are not fully met, provided the projects meet the applicable statutory and regulatory requirements and funds are available for such projects.

IP Selection

Final selection of IPs will be made by the Director, Office of Wastewater Management. Selected organizations will be notified and requested to submit a full application. It is expected that unsuccessful applicants will be notified by e-mail.

Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the Clean Water Act are State water pollution control agencies. Tribal governments, intertribal consortia, interstate agencies, and other public or non-profit private agencies, institutions, and organizations.

Application Procedure

Electronic transmittal of IPs is preferred to facilitate the review process. Hard copies are acceptable. Please send three copies of the IPs if it is not electronically transmitted.

Dispute Resolution Process

Procedures at 40 CFR 30.63 and 40 CFR 31.70 apply.

Type of Assistance

It is expected that all the awards under this program will be cooperative agreements. States, interstate agencies, federally recognized tribes, and intertribal consortia meeting the requirements at 40 CFR 35.504 may include the funds for Water Quality Cooperative Agreements in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs at 40 CFR part 35, subparts A and B. For states and interstate agencies that choose to do so, the regulations provide that the work plan commitments that would have been included in the WQCA must be included in the PPG work plan. A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

Schedule of Activities

This is the estimated schedule of activities for submission, review of proposals and notification of selections:

December 30, 2002—RFIPs due to EPA.

February 10, 2003—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package. Schedule may be modified based on the level of response.

A list of selected projects will be posted on the Office of Wastewater Management Web site *http://www.epa.gov/owm/FY2003WQCA.* This Web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this web site and not in the **Federal Register.**

Dated: October 18, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–27705 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, November 12, 2002 (Two (2) Panels—10 a.m. and 2 p.m. Eastern Time).

PLACE: Clarence M. Mitchell Conference Room on the Ninth Floor of the EEOC Office Building, 1801 L Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Panel Discussions on Federal Sector EEO Complaint Processing Reform.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.).

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued October 29, 2002.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 02–27905 Filed 10–29–02; 3:37 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–2759]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than December 16, 2002. Reply comments may be filed no later than December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this public notice, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are 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 applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html.* They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 44512th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. 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 24,121 (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, Vistronix, 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–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 5–C212, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov.* 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. 98–67, 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.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov.* This public notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–32–01

California Public Utilities Commission, State of California

File No: TRS–43–02

Idaho Public Service Commission, State of Idaho

File No: TRS–07–02

Kansas Corporation Commission, State of Kansas

File No: TRS–59–02

Division of Public Utilities and Carriers, State of Rhode Island

File No: TRS–09–02

Division of Public Utilities, State of Utah

File No: TRS–51–02

Georgia Public Utilities Commission, State of Georgia

File No: TRS–08–02

Indiana Telephone Relay Access, State of Indiana

File No: TRS–15–02

Missouri Public Utilities Commission, State of Missouri

File No: TRS–60–02

Department of Human Services, State of South Dakota

File No: TRS–06–02

West Virginia Public Service Commission, State of West Virginia

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–27688 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–2761]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than December 16, 2002. Reply comments may be filed no later than December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this public notice, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are 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 applications for certification are also available on the Commission's web site at *http:/www.fcc.gov/cgb/dro/trs_by_state.html.* They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. 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 24,121 (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, Vistronix, 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–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 5–C212, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov.* 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. 98–67, 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.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

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Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225 and the Commission's rules, 47 CFR § 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS

program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–02–02

Arizona Council for Hearing Impaired, State of Arizona

File No: TRS–23–02

Colorado Public Utilities Commission, State of Colorado

File No: TRS–32–02

State of Delaware Public Service Commission, State of Delaware

File No: TRS–22–02

Hawaii Public Utilities Commission, State of Hawaii

File No: TRS–03–02

Iowa Utilities Board, State of Iowa

File No: TRS–37–02

Public Utilities Commission of Ohio, State of Ohio

File No: TRS–33–02

Maryland Department of Budget and Management, State of Maryland

File No: TRS–04–02

Virginia Public Service Commission, State of Virginia

File No: TRS–01–02

Wisconsin Department of Administration, State of Wisconsin

File No: TRS–18–02

Wyoming Department of Administration, State of Wyoming

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–27689 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–2760]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than December 16, 2002. Reply comments may be filed no later than December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

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SUPPLEMENTARY INFORMATION: This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are 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 applications for certification are also available on the Commission's web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. 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 24,121 (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, Vistronix, 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–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 5–C212, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. 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. 98–67, 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.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–52–02

Kentucky Public Service Commission, State of Kentucky

File No: TRS–56–02

Telecommunications Access Service, State of Montana

File No: TRS–25–02

Dept. of Employment, Training and Rehabilitation, State of Nevada

File No: TRS–30–02

Department of Health and Human Services, State of North Carolina

File No: TRS–13–02

Louisiana Relay Administration Board, State of Louisiana

File No: TRS–40–02

Nebraska Public Service Commission, State of Nebraska

File No: TRS–42–02

New Hampshire Public Service Commission, State of New Hampshire

File No: TRS–36–02

Oregon Public Utilities Commission, State of Oregon

File No: TRS–20–02

Tennessee Regulatory Authority, State of Tennessee

File No: TRS–44–02

Department of Public Service, State of Vermont

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–27690 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–46; DA 02–2666]

Report on Technical and Operational Wireless E911 Issues

AGENCY: Federal Communications Commission.

ACTION: Notice; comment invited.

SUMMARY: The Commission seeks comment on a Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services by Dale N. Hatfield (the Hatfield Report). The Commission will use the information in the Hatfield Report and in the comments it receives to assess enhanced emergency 911 services deployment issues and consider methods to overcome any obstacles and accelerate deployment.

DATES: Comments are due on or before November 15, 2002, and reply comments are due on or before December 3, 2002.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jennifer Salhus, Room 3A–131, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus and Won Kim, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. The Wireless Telecommunications Bureau invites the public to comment on a Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services by Dale N. Hatfield filed on October 15, 2002 (the Hatfield Report). The Commission will use the information in the Hatfield Report and in the comments it receives to assess enhanced emergency 911 services (E911) deployment issues and consider methods to overcome any obstacles and accelerate deployment.

2. In a series of orders beginning in 1996, the Commission required wireless carriers to provide both basic and enhanced emergency 911 services. The Commission has recognized that despite substantial progress to date in the development of the technologies to support E911 location capability, much remains to be done to achieve the Commission's fundamental goal of having wireless E911 location capabilities deployed throughout the country.

3. In the fall of 2001, the Commission announced that Dale N. Hatfield, former Chief of the Commission's Office of Engineering and Technology, would conduct an inquiry into technical and operational issues with wireless E911 deployment.

4. On March 5, 2002, the Wireless Telecommunications Bureau (the Bureau) released a Public Notice announcing the details of the inquiry. The Bureau noted that the purpose of the inquiry was to obtain an expert, informed, unbiased assessment of the technical and operational issues that affect wireless E911 deployment. The Bureau stated that information would be gathered and evaluated from many sources, including from technology vendors, network equipment and handset manufacturers, carriers, the public safety community, and other sources concerning technology standards issues, development of hardware and software, and supply conditions. The inquiry was also intended to address the provisioning by Local Exchange Carriers (LECs) of the facilities and equipment necessary to receive and utilize E911 data elements. The Bureau indicated that the focus of the inquiry was on the future of the wireless E911 deployment, including obstacles to deployment and steps that might be taken to overcome or minimize them. The Bureau noted that, at the conclusion of his inquiry, Mr. Hatfield

would prepare a report of his findings that would be released for public comment.

5. On October 15, 2002, Mr. Hatfield filed a report conveying the results of his inquiry. In his report, Mr. Hatfield notes initially the importance of wireless E911 for emergency services, the progress that has been made in wireless E911 implementation over the past several years, especially in the development and selection of technologies for obtaining location information, and the critical role LECs play in implementation of wireless E911. Mr. Hatfield makes several findings about current E911 implementation efforts and offers a number of recommendations to address some of the principal issues and concerns raised during the course of the inquiry.

6. Mr. Hatfield recommends that a ''National 911 Program Office'' be established within the proposed Department of Homeland Security to coordinate with local and state public safety first responders and other stakeholders.

7. Because of the importance of E911 to the safety of life and property and to homeland security, Mr. Hatfield recommends that the Commission maintain or even increase its oversight of the rollout of wireless E911 services in the U.S. over the next several years.

8. Mr. Hatfield recommends that the Commission:

—Establish an advisory committee to address the technical framework for the further development and evolution of E911 systems and services including technical standards;

—Continue to urge the creation of organizations at the state, regional, and local levels of government to coordinate the rollout of wireless E911 services; and

—Encourage the creation of a national level clearinghouse to collect, store, and disseminate status information on the rollout of wireless E911.

9. Mr. Hatfield recommends that the Commission actively coordinate with and support the U.S. Department of Transportation's Wireless E911 initiative and other efforts to educate state and local governments and PSAPs on the benefits and importance of wireless E911 services. He also recommends that the Commission continue to support the efforts of the Emergency Services Interconnection Forum (ESIF) to address the issue of PSAP readiness.

10. Mr. Hatfield recommends that the Commission work closely with individual and state regulatory commissions and their association, the National Association of Regulatory Utility Commissioners (NARUC), in resolving issues relating to LEC cost recovery and pricing. In addition, Mr. Hatfield recommends that the Commission urge stakeholders to develop industry-wide procedures for testing and certification of wireless E911 to ensure that they meet the accuracy requirements specified in the Commission's rules.

11. Finally, Mr. Hatfield makes recommendations about several other issues, including the need for end-to-end testing of wireless E911 systems, conveying confidence/uncertainty information associated with position determination and routing choices, accommodating new requirements and requirement ''creep,'' the impact of future technological developments, consumer expectations, the implications of commercial location-based services, and the need for an adaptable regulatory approach. A copy of the report can be found at: *http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513296239.*

12. Interested parties may file comments on the report on or before November 15, 2002, and reply comments on or before December 3, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

13. This is a ''permit but disclose'' proceeding pursuant to section 1206 of the Commission's Rules. Presentations to or from Commission decision-making personnel are permissible provided that *ex parte* presentations are disclosed pursuant to 47 CFR 1.1206(b). 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 filing 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 copy 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 email address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

14. 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, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A copy should also be sent to Jennifer Salhus, 445 12th Street, SW., Room 3–A131, Washington, DC 20554.

15. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone (202) 863–2893; facsimile (202) 863–2898) or via e-mail at *qualexint@aol.com.* In addition, one copy of each submission must be filed with the Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 02–27647 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE: Tuesday, October 29, 2002 the closed meeting scheduled for that day was cancelled.

DATE AND TIME: Tuesday, November 5, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–27896 Filed 10–29–02; 2:59 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 2002

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Gravett Bancshares, Inc., Gravette, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Gravett, Gravette, Arkansas.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Merchants Financial Group, Inc., Winona, Minnesota; to acquire 100 percent of the voting shares of Merchants Bank, National Association, La Crescent, Minnesota, a de novo bank, in connection with the relocation of the charter of the existing Merchants Bank, National Association, La Crescent, Minnesota, to Onalaska, Wisconsin.

Board of Governors of the Federal Reserve System, October 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27653 Filed 10–30–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science and Food and Drug Administration

[Docket No. 02N–0466]

Solicitation of Public Review and Comment on Research Protocol: A Multicenter, Randomized Dose Response Study of the Safety, Clinical and Immune Response of Dryvax® Administered to Children 2 to 5 Years of Age

AGENCY: Office of Public Health and Science and Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA), HHS are soliciting public review and comment on a proposed research protocol entitled ''A Multicenter, Randomized Dose Response Study of the Safety, Clinical and Immune Response of Dryvax® Administered to Children 2 to 5 Years of Age.'' The proposed research would be supported by a contract awarded by the National Institutes of Health (NIH) and conducted under an Investigational New Drug Application (IND) filed with the FDA. Public review and comment is solicited regarding the proposed research protocol pursuant to the requirements of HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. December 2, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Docket Number 02N–0466, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* All comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be viewed on the FDA Web site at: *http://www.fda.gov/ohrms/dockets/dockets/02n0466/02n0466.htm* or may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Leslie K. Ball, Office for Human Research Protection, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone

301–496–7005; fax 301–402–0527; e-mail: *LBall@osophs.dhhs.gov;* or Ms. Patricia M. Beers Block, Office for Good Clinical Practice, OSHC, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, HF–34, Rockville, MD 20857; telephone 301–827–3340; fax 301–827–1169; *e-mail: pbeersblock@oc.fda.gov.*

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS which are not otherwise exempt and which propose to involve children as subjects require Institutional Review Board (IRB) review in accordance with the provisions of HHS regulations at 45 CFR part 46, subpart D. Under FDA's Interim Final Rule effective April 30, 2001 (21 CFR part 50, subpart D), FDA adopted similar regulations to provide safeguards for children enrolled in clinical investigations of FDA-regulated products.

Pursuant to HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54, if an IRB reviewing a protocol conducted or supported by HHS for a clinical investigation regulated by FDA does not believe that the proposed research or clinical investigation involving children as subjects meets the requirements of HHS regulations at 45 CFR 46.404, 46.405, or 46.406, and FDA regulations at 21 CFR 50.51, 50.52, or 50.53, respectively, the research or clinical investigation may proceed only if the following conditions are met: (a) The IRB finds and documents that the research or clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health and welfare of children; and (b) the Secretary (HHS) and the Commissioner (FDA), respectively, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment determine either:

(1) That the research or the clinical investigation in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406 under HHS regulations, and 21 CFR 50.51, 50.52, or 50.53 under FDA regulations, or (2) that the following conditions are met: (i) The research or clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research or clinical investigation will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408 and 21 CFR 50.55.

HHS received a request from Harbor-UCLA Medical Center to review a protocol entitled ''A Multicenter, Randomized Dose Response Study of the Safety, Clinical and Immune Response of Dryvax® Administered to Children 2 to 5 Years of Age'' pursuant to the provisions of HHS regulations at 45 CFR 46.407. The sponsor of this research, the National Institute of Allergy and Infectious Diseases (NIAID), NIH, proposes to study the safety and immune response to Dryvax® (vaccinia virus vaccine), when administered to children 2 to 5 years of age. This study proposes to evaluate Dryvax® at its full, licensed strength and at a 1:5 dilution, in children enrolled in a number of sites, including Harbor-UCLA Medical Center and Cincinnati Children's Hospital Medical Center. Use of Dryvax® in this protocol is being performed under an FDA IND primarily because there are no data to support the efficacy of the 1:5 dilution of this product in children. This protocol was developed by NIAID in the context of current HHS bioterrorism preparedness plans, given the potential risk of smallpox being used as a weapon of bioterrorism, and has been approved by two IRBs.

However, after reviewing this research proposal, the Harbor-UCLA Medical Center IRB determined that this study could not be approved under 45 CFR 46.404, 46.405, or 46.406 but was suitable for review under 45 CFR 46.407. Because this clinical investigation is regulated by FDA, FDA's regulations at 21 CFR part 50, subpart D, apply as well. The Harbor-UCLA Medical Center IRB was unable to assess the prospect of direct benefit to the participants but found that the research presented a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children. NIAID has not initiated this clinical trial pending the Secretary's and Commissioner's determination. Experts in relevant disciplines have reviewed this protocol (see discussion below regarding access to each expert's report), but prior to the Secretary and Commissioner making a final determination, public review and comment are hereby solicited pursuant to HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54. In particular, comments are solicited on the following questions: (1) What are the potential benefits of the research, if any, to the subjects and to children in general; (2) what are the types and degrees of risk that this research presents to the subjects; (3) are the risks to the subjects reasonable in relation to the anticipated benefits, if any, to the subjects, and the importance of the knowledge that may reasonably be expected to result; and (4) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children?

All written comments concerning this matter should be submitted to FDA's Dockets Management Branch pursuant to 21 CFR 10.20. Received comments may be viewed on the FDA Web site at: *http://www.fda.gov/ohrms/dockets/dockets/02n0466/02n0466.htm* or may be seen in the Dockets Management Branch between the 9 a.m. and 4 p.m., Monday through Friday.

Materials available for review on the OHRP Web page (available at *http://ohrp.osophs.dhhs.gov/dpanel/dpindex.htm)* include: The NIH protocol, site-specific protocol application reviewed by the Harbor-UCLA Medical Center IRB, sample parental permission document, relevant package inserts, and reports of each of the experts pursuant to HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54. A paper copy of the information referenced here is available upon request.

Dated: October 23, 2002.

Lester M. Crawford,

Deputy Commissioner, FDA.

Dated: October 24, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–27769 Filed 10–30–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0454]

Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of a Claim for Generally Recognized as Safe Exemption Based on a Generally Recognized as Safe Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedures used for submitting a generally recognized as safe (GRAS) notice stating that a particular use of a substance is not subject to the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by December 30, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of a Claim for GRAS Exemption Based on a GRAS Determination (OMB Control Number 0910–0342)—Extension

Description: Section 409 of the act (21 U.S.C. 348) establishes a premarket approval requirement for ''food additives;'' section 201(s) of the act (21 U.S.C. 321) provides an exemption from the definition of ''food additive'' and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act and other Federal disclosure statutes.

Description of Respondents: Manufacturers of Substances Used in Food and Feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500
Total					9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
170.36(c)(v)	50	1	50	15	750
570.36(c)(v)	10	1	10	15	150
Total					900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting requirement is for a proposed rule (62 FR 18937, April 17, 1997) that has not yet been issued as a final rule. In developing the proposed rule, FDA solicited input from representatives of the food industry on the reporting requirements, but could not fully discuss with those representatives the details of the proposed notification procedure. FDA received no comments on the agency's estimate of the hourly reporting requirements, and thus has no basis to revise that estimate at this time. During 1998, FDA received 12 notices that were

submitted under the terms of the proposed rule. FDA received 23 notices in 1999, 30 notices in 2000, and 28 notices in 2001. To date, the number of annual notices is less than FDA's estimate; however, the number of annual notices could increase when the proposed rule becomes final.

Dated: October 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27741 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0208]

Agency Information Collection Activities; Announcement of OMBApproval; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcingthat a collection of information entitled ''State EnforcementNotifications'' has been approved by the Office of Management andBudget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Officeof Information Resources Management (HFA–250), Food and DrugAdministration, 5600 Fishers Lane, Rockville, MD 20857,301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 2002 (67 FR 51860),the agency announced that the proposed information collection had beensubmitted to OMB for review and clearance under 44 U.S.C. 3507. An agencymay not conduct or sponsor, and a person is not required to respond to, acollection of information unless it displays a currently valid OMB controlnumber. OMB has now approved the information collection and has assignedOMB control number 0910–0275. The approval expires on October 31,2005. A copy of the supporting statement for this information collectionis available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27740 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA Grantee Telecommunications and Telehealth Inventory and Database—New

The Health Resources and Services Administration's (HRSA) mission is to improve and expand access to quality health care for all. Through its grant program, HRSA provides funds to ensure the availability of quality health care to low income, uninsured, isolated, vulnerable and special needs populations.

Within HRSA, the Office for the Advancement of Telehealth (OAT) increases access to quality health care services for the underserved by promoting the use of advanced telecommunications and information technologies by health care providers across America. HRSA is a leading national supporter and developer of telehealth, which is the use of electronic information and telecommunications technologies for a wide variety of health-related activities. These include long-distance clinical care, patient and professional education, and health administration.

HRSA provides grant funding to over 8000 recipients to improve healthcare delivery in the United States. Those offices and programs increasingly depend on the emerging technologies and telecommunications systems to deliver healthcare, yet no data is available on grant recipients' access to or utilization of those technologies. The proposed inventory will serve as a model for collecting this type of information across a disparate group of projects nationally and if successful will be ultimately integrated into HRSA's overall data system.

All grantees will be asked to address access to telehealth technologies at their respective institutions. Telehealth activities include the practice of telemedicine, delivery of distance education, health informatics, healthcare staff supervision from remote sites, and the provision of consumer health information using telecommunications technologies. Additionally, grantees will be asked to provide information on their network members or satellite site. For those grantees practicing telemedicine, the survey will include a section on diagnostic tools and clinical capabilities.

The survey will be delivered via the world wide web; hard copy will be made available for those grantees with no Internet access. Substantive questions may be systematically included in the grantees' progress reporting.

Estimated burden hours:

Type of survey	Number of respondents	Number of responses per respondent	Total Number of responses	Hours per response	Total burden hours
Web-based	7,965	1	7,965	.17	1,355
Hard-copy	885	1	885	.20	177

Type of survey	Number of respondents	Number of responses per respondent	Total Number of responses	Hours per response	Total burden hours
Total	8,850		8,850		1,532

Send comments to Susan G. Queen, Ph. D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this Notice.

Dated: October 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–27678 Filed 10–30–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Women's Health Demonstration Program for American Indians and Alaska Natives

AGENCY: Indian Health Service (DHHS), HHS.

ACTION: Notice of availability of funds for competitive grants for Indian Women's Health Demonstration Program for American Indians and Alaska Natives (AI/AN).

SUMMARY: The Indian Health Service (IHS) announces that approximately $700,000 is available for the support of competitive grants to Tribal, Urban and nonprofit Indian organizations for approximately seven demonstration projects under the Indian Women's Health Demonstration Program. These funds have been established under the authority of section 301(a) of the Public Health Service (PHS) Act, as amended. There will only be one funding cycle during Fiscal Year (FY) 2003 (*see* fund availability and period of support). This program is described in section 39.933 of the *Catalog of Federal Domestic Assistance.* Executive Order 12372, which requires intergovernmental review, is not applicable to this program.

The Department's Office of Public Health and Science (OPHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area designed as Education and Community-Based Programs. Potential applicants may obtain a printed copy of *Healthy People 2010,* (Summary Report No. 017–001–00549–5) or CD–ROM, Stock No. 017–001–00549–5, through the Superintendent of Documents, Government Printing Office, PO Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may also access this information at the following Web site: *www.health.gov/healthpeople/publication.*

Smoke Free Workplace: The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Due Date: An original and two copies of the completed grant application must be submitted with all required documentation, to the Grants Management Branch, Division of Acquisition and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, by close of business December 6, 2002. Close of business is considered to be 5 p.m. Eastern Daylight Savings Time.

Applications shall be considered as meeting the due date if they are either: (1) Received on or before the deadline, with hand-carried applications received by close of business; or (2) postmarked on or before the due date. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted as proof of timely mailing. Private metered postmarks will not be accepted as proof of timely mailing. Applications received after the due date will be returned to the applicant and will not be considered for funding.

Additional Dates:

(a) Objective Review Date: December 16–17, 2002.

(b) Applicant Notification (approved; recommended for approval, but unfunded; or disapproved): January 3, 2003.

(c) Anticipated Start of Grant Cycle: January 13, 2003.

Contacts for Assistance: For program information, contact Ms. Celissa Stephens, Senior Nurse Consultant for Hospital and Clinic Nursing, Office of Public Health, IHS, 801 Thompson Avenue, Suite 300, Rockville, MD 20852, (301) 443–1840. For grants information, contact Ms. Martha Redhouse, Grants Management Branch, Division of Acquisitions and Grants Management, IHS, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program goal, eligibility and documentation requirements, programmatic activities, funding availability, period of support, and application procedures.

General Program Goal: The goal of this program is to establish and/or improve AI/AN women's health services. Funded programs will be community-based and culturally appropriate with measurable outcomes related to the following: (1) increased access to health promotion; (2) promotion of disease prevention activities; (3) improvement of existing research data; and (4) fostering of advocacy in policy appropriate to meet *Healthy People 2010* objectives.

Eligibility and Documentation Requirements: Any federally recognized Indian Tribe, Indian Tribal organization or nonprofit organization serving primarily AI/AN is eligible to apply for a demonstration grant from the IHS under this announcement.

Documentation of Support:

(a) Tribal resolutions.

(1) A resolution of the Indian Tribe or Indian Tribal organization supporting this specific program must accompany the application submission.

(2) Applications proposing services that will benefit more than one Indian Tribe must include resolutions from all Tribes to be served.

(3) Applications by Tribal organizations will not require resolution(s) if the current Tribal resolution(s) under which they operate encompass the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application.

(4) If a required resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

(b) Nonprofit organizations must submit copies of their 501(c)(3) Certificate.

(c) Letters of cooperation/collaboration/assistance.

(1) Letters included in the application should be specific to this program.

(2) If other related human services programs are to be involved in this program, letters confirming the nature and extent of their cooperation/collaboration/assistance must be submitted.

Programmatic Activities: A grant awarded under this announcement shall establish a demonstration program for improving and enhancing the health services for AI/AN women. The program shall expand on existing services or programs, or build new capacity through activities that integrate or promote collaboration among existing services. The four identified focus areas are health promotion, disease prevention, data/research improvement and advocacy of policy appropriate to meet *Healthy People 2010* objectives.

Specific health priorities within these focus areas are cardiovascular disease; cervical, ovarian and breast cancer; gestational diabetes; breastfeeding; alcohol; smoking; lupus erythematosus; osteoporosis; unintentional injuries; domestic violence; and mental health.

Program objectives should be measurable by objective criteria and should focus on one or more of the following:

(a) Establishing or expanding health risk-reduction programs.

(b) Increasing access to and acceptance of existing preventative/primary health service.

(c) Increasing the awareness of and need for research/data improvements relative to AI/AN women's health status.

(d) Promoting networking and collaboration among existing providers of health services for AI/AN women.

The submission of creative and innovative ideas to enhance service coordination is encouraged.

Fund Availability and Period of Support: In FY 2003 it is anticipated that approximately $700,000 will be available to support seven projects at approximately $100,000 each (including direct and indirect costs). The programs may be funded in annual budget periods for up to five years depending on the defined scope of work. Funding levels beyond the first year will be based upon the availability of appropriations in future years, the continuing need by the IHS for the programs, and satisfactory program performance. The anticipated start date for year one is January 13, 2003.

The Indian Women's Health Demonstration Grant Application Kit: An IHS Grant Application Kit, including form PHS 5161–1 (Rev. 7/00), may be obtained from the Grant Management Branch, Division of Acquisition and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, (301) 443–5204.

Factors for Consideration in Preparing the Application:

(a) Following the outline provided in the announcement will assist in preparing the application and help the reviewers locate required information.

(b) Projects should demonstrate plans to coordinate with other agencies and organizations inside and outside the community that serves the targeted population.

(c) Indian cultural aspects may be considered in program design.

Grant Application Requirements: All applications must be single-spaced, typewritten, and with consecutively numbered pages on only one side of standard size 8½ × 11 paper that can be photocopied. The typeface should be black and at least 12 characters per inch in size. The border margins should be one inch. The application narrative must not exceed 10 typed pages, except that an additional page may be used for each additional year of funding requested.

Excluded from the 10 page limit are the abstract, tribal resolution(s), 501(c)(3) nonprofit certificates, letters of documentation or support, standard forms, table of contents, and the appendix.

All applications must include the following information in the order presented here:

(a) Tribal resolution(s), or 501(c)(3) certificate, and Letters of documentation or support.

(b) Standard form 424, Application for federal assistance.

(c) Standard Form 424A, Budget Information—Non-Construction Programs (pages 1 and 2).

(d) Standard form 424B, assurance—Non-construction programs (front and back).

(e) Checklist (pages 25–26). **Note:** each standard form and checklist are contained in the PHS Grant Application, form PHS 5161–1 (Rev. 7/00).

(f) A project abstract (may not exceed 1 typewritten page) should present a summary view of ''who-what-when-where-how-cost'' to determine acceptability for review.

(g) A table of contents corresponding to the numbered pages in the text.

(h) Project narrative (10 pages).

(1) Introduction and need for assistance.

(2) Project objective(s), approach, and results and benefits.

(3) Project evaluation.

(4) Organizational capabilities and qualifications.

(5) Budget.

(i) Appendix to include:

(1) Resumes of key staff.

(2) Position descriptions for key staff.

(3) Organizational chart.

(4) Documentation of current certified financial management systems.

(5) Copy of current negotiated indirect cost-rate agreement.

(6) Map of area to benefit from project; and

(7) Application receipt card, IHS–815–1A (Rev. 4/97).

Project Narrative: The project narrative section of the application must include the following:

(a) Justification for need for assistance;

(b) Work plan, program objectives, approach, expected results and evaluation process;

(c) Adequacy of management controls; and

(d) Key personnel.

The work-plan section should be project-specific. These instructions for the preparation of the narrative are to be used in lieu of the instructions on page 21–23 of the PHS 5161–1. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative may not exceed ten single-spaced pages in length, excluding attachments, budget, and Tribal resolutions/non-profit 501(c)(3) certificates/letters of documentation or support.

(**Note:** Pages must be numbered.)

(a) Need for Assistance.

(1) Describe and define the target population at the program location (*e.g.*, identify information sources).

(2) Describe in detail the needs of the target population and what efforts have been made in the past to meet these needs, if any.

(b) Work Plan.

(1) Program Objectives:

(i) State concisely the objectives of the project.

(ii) Describe briefly what the program intends to accomplish.

(iii) Describe how accomplishment of the objectives will be evaluated or measured.

(2) Approach:

(i) Describe the tasks and resources needed to implement and complete this program.

(ii) Provide a task time line (milestones) breakdown or chart.

(3) Expected Results (outcomes).

(4) Program Evaluation:

(i) Describe methods for evaluating program activities, success in achieving objectives, acceptance in the targeted population(s), and workload accomplishments.

(ii) Identify who will conduct the evaluation of the projected outcomes and when the evaluation is to be completed.

(iii) Identify the cost of the evaluation (whether internal or external).

(5) Program Continuance: Discuss how the program's services will be continued after the grant expires.

(6) Experience Sharing: Indicate willingness to share the program experience with IHS Areas, urban programs, Tribes and Tribal organizations.

(c) Adequacy of Management Controls:

(1) Describe where the program will be housed, *i.e.,* facilities and equipment available.

(2) Describe the management controls of the grantee over the directions and acceptability of work to be performed. Discuss personnel and financial systems in use and changes planned for this grant.

(3) Demonstrate that the organization has adequate systems and expertise to manage Federal funds. Also, include a letter from the accounting firm describing results of the most recent organization-wide audit.

(d) Key Personnel:

(1) Provide a biographical sketch (qualifications) and position descriptions for the program director and other key personnel as described on page 22 of the PHS 5161–1. Identify existing personnel and new program staff to be hired.

(2) Provide an organizational chart and indicate how the project will operate within the organization. Describe how this program will interface with other existing available resources.

(3) List the qualifications and experience of consultants or contractors where applicable. Identify who will determine if the work of a contractor is acceptable.

(e) Budget:

(1) Provide an itemized estimate of costs and justification for the proposed program by line item on Form SF 424A of the PHS 5161–1 Application Kit.

(2) Submit a narrative justification for all costs. Clearly specify needs by listing individual items and quantities necessary.

(3) Indicate any special start-up costs.

(4) Multi-Year Projects—Projects requiring two, three, four or five years of funding, include a brief program narrative and budget for each additional year of funding requested. The applicant may use one additional page to describe the developmental plans for each additional year of the project.

(5) Grant funding may not be used to supplant existing public and private resources.

(f) Assurances:

The application shall contain an assurance to the Secretary that the applicant will comply with program regulations, 42 CFR 36, subpart H.

Review Process: Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by reviewers appointed by the IHS. The review will be conducted in accordance with PHS review procedures. The review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, to assign a numerical score to each application, and to determine the likelihood of its success. Applications scoring below 60 points will not be considered for funding.

Evaluation Criteria: Applications will be evaluated against the following criteria and weights:

Weight	Criterion	Description
15	1	*Need*—The demonstration of identified problems and risks in the target population.
50	2	*Work Plan*—The soundness and effectiveness of the applicant's plan for conducting the program, with special emphasis on the objectives and methodology portion of the application.
15	3	*Adequacy of Management Controls*—The apparent capability of the applicant to successfully conduct the program including both technical and business aspects. The soundness of the applicant's budget in relation to the program work plan and for assuring effective utilization of grant funds. Adequacy of facilities and equipment available within the organization or proposed to be purchased under the program.
10	4	*Key Personnel*—Qualifications and adequacy of the staff.
10	5	*Budget*—Clarity and accuracy of program costs, and cost justification for the entire grant period.
100		Total Weight.

Reporting Requirements:

(1) *Progress Report*—Program progress reports will be required semiannually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage, if applicable, and other pertinent information as required. A final report is due 90 days after expiration of the project/budget period.

(2) *Financial Status Report*—A semiannual financial status report will be submitted 30 days after the end of the half-year. Final financial status reports are due 90 days after expiration of the project/budget period. Standard form 269 (long form) will be used for financial reporting.

Grant Administration Requirements: Grants are administered in accordance with the following documents:

(1) 45 CFR part 92, the HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments.

(2) PHS Grants Policy Statement.

(3) Appropriate Cost Principles: OMB Circular A–87, State and Local Governments, or OMB Circular A–122, Nonprofit Organizations.

Results of the Review: Successful applicants will be notified through the official Notice of Grant Award (NOGA) document. The NOGA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

Dated: October 24, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs for Fiscal Year (FY) 2003.

SUMMARY: The Indian Health Service (IHS) is publishing a Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs for Fiscal Year (FY) 2003.

The IHS announces the availability of approximately $3,750,000 to fund scholarships for the Health Professions Preparatory, and Pregraduate Scholarship Programs for FY 2003 awards. These programs are authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended by Public Law 100–713, Public Law 102–573, and Public Law 104–313.

The Indian Health Scholarship (Professions), authorized by section 104 of the IHCIA, Public Law 94–437, as amended by Public Law 100–713, by Public Law 102–573, and by Public Law 104–313 has approximately $8,215,500 available for FY 2003 awards.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

The Indian Health Professions Preparatory Scholarship is listed as No. 93.123 in the Office of Management and Budget *Catalog of Federal Domestic Assistance* (CFDA). The Health Professions Pregraduate Scholarship is listed as No. 93.971, and the Indian Health Scholarship (Professions) is listed as No. 93.972 in the CFDA.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2010,* (Full Report, Stock No. 017–001–00474–0) or *Healthy People 2010,* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

DATES: The application deadline for both new and continuing applicants is February 28, 2003. If February 28 falls on the week-end, the application will be due on the following Monday. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.) Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

ADDRESSES: Application packets may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856, 856–2 through 856–8, 815, 816, 818 (approved under OMB No. 0917–0006 (expires 12/31/2004)).

IHS Area office and States/locality served:	Scholarship coordinator/address:
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota	Ms. Alice LaFontaine, Scholarship Coordinator, Aberdeen Area IHS, Federal Building, Room 309, 115 4th Avenue, SE, Aberdeen, SD 57401, *Tele:* (605) 226–7553.
Alaska Area Native Health Service: Alaska	Ms. Rea Bavilla, Scholarship Coordinator, Alaska Area IHS, 4141 Ambassador Drive, Rm. 349, Anchorage, Alaska 99508, *Tele:* (907) 729–1332.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Alvina Waseta, Scholarship Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, *Tele:* (505) 248–4513.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin.	Mr. Tony Buckanaga, Scholarship Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW, Bemidji, MN 56601, *Tele:* (218) 759–3415.
Billings Area IHS: Montana, Wyoming	Mr. Sandy Macdonald, Scholarship Coordinator, Billings Area IHS, Area Personnel Office, PO Box 36600, 2900 4th Avenue, North, Billings, MT 59103, *Tele:* (406) 247–7210.
California Area IHS: California, Hawaii	Ms. Mona Celli, Scholarship Coordinator, California Area IHS, 650 Capitol Mall, 3rd Floor, Sacramento, CA 95814, *Tele:* (916) 930–3981.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Alvina Waseta, Scholarship Coordinator, Nashville Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, *Tele:* (505) 248–4513.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Roselinda Allison, Scholarship Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, *Tele:* (520) 871–1358.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma	Mr. Jim Ingram, Scholarship Coordinator, Oklahoma City Area IHS, HC 67, Box 132, Marietta, OK 73448, *Tele:* (580) 276–5983.
Phoenix Area IHS: Arizona, Nevada, Utah	Lena Fasthorse, Scholarship Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #600, Phoenix, AZ 85004, *Tele:* (602) 364–5220.

Portland Area IHS: Idaho, Oregon, Washington	Ms. Janelle Langland, Scholarship Coordinator, Portland Area IHS, 1220 SW Third Avenue, Rm. 440, Portland, OR 97204–2892, *Tele:* (503) 326–2625.
Tucson Area IHS: Arizona, Texas	Ms. Malinda Paul, Scholarship Coordinator, Tucson Area IHS, 7900 South ''J.'' Stock Rd., Tucson, AZ 85746, *Tele:* (520) 295–2441.

FOR FURTHER INFORMATION CONTACT: Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Capt. Patricia Yee-Spencer, Acting Chief, Scholarship Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–6197. (This is not a toll free number.) For grants information, contact Mr. Bernard Covers Up, Grants Scholarship Coordinator, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–5204. (This is not a toll-free number.)

A. General Program Purpose: These grants programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians.

B. Eligibility Requirements: 1. The Health Professions Preparatory Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum. Support is limited to 2 years for full-time students and the part-time equivalent of 2 years not to exceed 4 years for part-time students.

2. The Health Professions Pregraduate Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

3. The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized tribe as provided by section 104, 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA. Support is limited to 4 years for full time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 36.330. Recipients shall incur a service obligation prescribed under section 338C of the Public Health Service Act (43 U.S.C. 244m) which shall be met by service:

(1) In Indian Health Service;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In private practice of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service;

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 104–313), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338c of the Public Health Service Act (42 U.S.C. 254m) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, and Pub. L. 102–573.

C. *Fund Availability:* Both part-time and full-time scholarship awards will be made in accordance with regulations at 42 CFR part 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Program for Indians and 42 CFR part 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Program for Indians. Approximately 238 awards, 100 of which are continuing, will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately $18,000. In FY 2003, approximately $1,500,000 is available for continuation awards and approximately $2,250,000 is available for new awards.

Approximately 393 awards, 179 of which are continuing, will be made under the Indian Health Scholarship (Professions) Program. Awards will be made to both full-time and part-time students. The awards are for 12 months in duration and the average award to a full-time student is for approximately $23,000. In FY 2003, approximately $3,410,000 is available for continuation awards, and $4,485,000 is available for new awards.

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status.

D. *Criteria for Evaluation:* Applications will be evaluated against the following criteria:

1. Needs of the IHS. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

2. Academic Performance. Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are

asked to provide a personal judgment of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

3. Faculty/Employer Recommendations. Applicants are rated according to evaluations by faculty members and current and/or former employers regarding the applicant's potential in the chosen health related professions.

4. Stated Reasons for Asking for the Scholarship and Stated Career Goals. Applicants must provide a brief written explanation of reasons for asking for the scholarship and of career goals. The applicant's narrative will be judged on how well it is written and content.

5. Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

E. *Priority Categories:* Regulations at 42 CFR part 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Pub. L. 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded. The list of priority health professions that follow, by scholarship program, and based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

1. Health Professions Preparatory Scholarship Scholarships. (Below is the list of disciplines to be supported and priority is based on academic level.)

A. Pre-Dietetics.
B. Pre-Engineering.
C. Pre-Medical Technology.
D. Pre-Nursing.
E. Pre-Pharmacy.
F. Pre-Physical Therapy (Jr and Sr undergraduate years).
G. Pre-Social Work (Jr and Sr undergraduate years).

2. Health Professions Pregraduate Scholarships. (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman.)

A. Pre-Dentistry.
B. Pre-Medicine.

3. Indian Health Scholarships (Professions). (Below is a list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman.)

A. Associate Degree Nurse.
B. *Chemical Dependency Counseling:* Baccalaureate and Masters level.
C. *Clinical Psychology:* Ph.D. only
D. *Coding Specialist:* Certificate
E. *Counseling Psychology:* Ph.D. only
F. *Dental Hygiene:* B.S.
G. *Dentistry:* B.S, and M.S.
H. *Diagnostic Radiology Technology:* Certificate, Associate, and B.S.
I. *Dietitian:* B.S.
J. *Engineering (Civil and Environmental):* B.S.
K. *Environmental Health (Sanitarian):* B.S.
L. *Health Care Administration:* B.S. and M.S.
M. *Health Education:* Masters level only.
N. *Health Records:* R.H.I.T and R.H.I.A.
O. Injury Prevention Specialist
P. *Medical Social Work:* Masters level only.
Q. *Medical Technology:* B.S.
R. *Medicine:* Allopathic and Osteopathic
S. *Nurse:* B.S.*
T. *Nurse: M.S.**
U. *Nurse:* R.N.A.

*(Priority consideration will be given to registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act).

V. Optometry.
W. *Pharmacy:* B.S., Pharm D.
X. Physician Assistant.
Y. *Physical Therapy:* M.S. and D.P.T.
Z. *Podiatry:* D.P.M.
AA. *Public Health:* M.P.H. only (Applicants must be enrolled or accepted in a school of public health in specialty areas such as Dietetics and Community Development in health).
BB. *Public Health Nutrition:* Masters level only.
CC. *Respiratory Therapy:* Associate
DD. *Ultrasonography (Prerequisite:* Diagnostic Radiology Technology)

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2003–2004 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: October 24, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim director, Indian Health Service.

[FR Doc. 02–27680 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–16–M

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.

Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930–0106, Revision)—The DASIS consists of three related data systems: The Inventory of Substance Abuse Treatment Services (I–SATS); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment.

The request for OMB approval includes only modest changes to the 2003 N–SSATS questionnaire, including the addition of buprenorphine to the pharmacotherapies list, the addition of beds for children of clients in treatment to the ''other services''' list, and the addition of a question to obtain outpatient treatment capacity to the outpatient treatment section. The

remaining sections of the N–SSATS questionnaire will remain unchanged except for minor modifications to wording.

Approval is also being requested for an additional component, the Mini-N–SSATS. The Mini-N–SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The between-survey telephone calls to newly identified facilities allow facilities to be added to the Locator in a more timely manner.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States:				
TEDS Admission Data	52	4	6	1,248
TEDS Discharge Data	35	4	6	840
TEDS Discharge Crosswalks	5	1	10	50
I–SATS Update	56	67	0.08	300
State Subtotal	56			2,438
Facilities				
N–SSATS Questionnaire	19,000	1	.6	11,400
Pretest of N–SSATS revisions	50	1	1	50
Augmentation Screener	500	1	.08	40
Mini N–SSATS	700	1	.4	280
Facility Subtotal	20,250			11,770
Total	20,306			14,208

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–27675 Filed 10–30–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of Incidental Take Permits Associated With a Habitat Conservation Plan for the Kern Valley Floor, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, the Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare, in coordination with Kern County, a joint Environmental Impact Statement /Environmental Impact Report (EIS/EIR) on the Kern County Valley Floor Habitat Conservation Plan (Plan). The Plan covers an area of 3,110 square miles (1,990,400 acres) of the Valley Floor in Kern County, California. Kern County and others intend to request Endangered Species Act permits for 11 species federally listed as threatened or endangered and 17 unlisted species that may become listed during the term of the permits. The permits are needed to authorize take of listed species that could occur as a result of urban and oil field development, and associated facilities.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues to be included in the EIS/EIR. While written comments are encouraged, we will accept both written and oral comments at the meetings. In addition, you may submit written comments by mail or facsimile transmission.

DATES: Public meetings will be held on the following dates: (1) November 19, 2002, 2 p.m. to 4 p.m., Taft, California; and (2) November 19, 2002, 7 p.m. to 9 p.m., Bakersfield, California. Written comments should be received on or before December 2, 2002.

ADDRESSES: The meeting locations are: (1) Taft-218 Taylor Street, Taft Veteran's Hall, Room #1; and (2) Bakersfield-2700 M Street, Kern County Public Services Building, First Floor Conference Room. Information, written comments, or questions related to the preparation of the EIS/EIR and the National Environmental Policy Act process should be submitted to Vicki Campbell, Division Chief, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, or Vicki Campbell, Division Chief, Conservation Planning, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Vicki Campbell at (916) 414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize ''incidental take'' of

listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The Plan will address incidental take of 28 covered species (species for which incidental take authorization is requested). These include the federally listed as endangered blunt-nosed leopard lizard *(Gambelia sila)*, Tipton kangaroo rat *(Dipodomys nitratoides nitratoides)*, giant kangaroo rat *(Dipodomys ingens)*, San Joaquin kit fox *(Vulpes macrotis mutica)*, Buena Vista Lake shrew *(Sorex ornatus relictus)*, California jewelflower *(Caulanthus californicus)*, Kern mallow *(Eremalche kernensis)*, San Joaquin woolly threads *(Monolopia congdonii)*, Bakersfield cactus *(Opuntia basilaris var. treleasei)*, and the threatened Hoover's eriastrum *(Eriastrum hooveri)*, San Joaquin Adobe Sunburst *(Pseudobahia peirsonii)*, and 17 currently unlisted species and their habitats.

The proposed geographic area to be included in the Plan can be generally described as that portion of the San Joaquin Valley floor within Kern County, bounded by San Luis Obispo County to the west, Kings and Tulare counties to the north, and the 2,000-foot elevation contour to the east and south. On the west side, portions of the Plan area are at elevations greater than 2,000 feet. The project area includes approximately 3,110 square miles (1,990,400 acres). The Plan excludes several areas that are covered under separate conservation planning efforts. Excluded areas include the Coles Levee Ecosystem Preserve, Elk Hills (formerly Naval Petroleum Reserve in California No. 1), Buena Vista Naval Petroleum Reserve in California No. 2, and the area covered by the existing Metropolitan Bakersfield Habitat Conservation Plan. However, the Plan will include oil and gas production activities within the Metropolitan Bakersfield Habitat Conservation Plan area, as those activities were not authorized for take under the Metropolitan Bakersfield Habitat Conservation Plan. Oil and gas production activities will occur within 497,176 acres in the Plan area, as well as 90,083 acres in the Metropolitan Bakersfield Habitat Conservation Plan area.

Under the Plan, effects of urbanization and other activities are expected to be minimized and mitigated through participation in the conservation program, which will be described in the Plan. The focus of this conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area, including nonnative grasslands, valley saltbush scrub, and valley sink scrub. The proposed major conservation components are described below.

Habitat Zones. The valley floor is broken up into three zones: Red Zone (128,594 acres), Green Zone (774,348 acres), and White Zone (1,087,241 acres). These habitat zones establish conservation priority of lands within the Plan area based on the relative conservation value of the habitat found in each zone. There are eight individual Red Zones ranging from 480 to 50,160 acres. The Red Zones contain the highest quality habitat for covered species. A number of rare plant occurrences are also found in the Red Zones. The Green Zone has the second highest habitat quality and generally includes areas around the western, southern, and eastern edges of the Plan area. The White Zone contains approximately 55 percent of the total Plan area. The White Zone generally has less valuable habitat and occurs throughout the central and eastern portions of the valley floor and is composed mostly of lands in active agriculture. These habitat zones serve as the basis for the Compensation Framework.

Compensation Framework and Options. The Compensation Framework is a compensate-as-you-go approach that encourages conservation of Red Zone and Green Zone habitats and creates a system of conservation credits based on habitat quality. Credits are created by willing landowners and purchased by project proponents on a free market basis. Except in limited circumstances, White Zone land will not qualify for conservation preserves.

Several compensation options are described in the Plan. The first option, Direct Fee Payment, would allow project proponents to pay a predetermined fee to Kern County to purchase conservation credits. The County would then pool those fees to obtain conservation lands through either fee title, purchase of conservation easements, or a combination of both.

The second option, Industry/Agency Conservation Strategy, would address incidental take of covered species that may occur as a result of certain activities associated with major land uses (*e.g.*, oil and gas, water systems, urban development, and public infrastructure). Within this option, three strategies are proposed for dealing with oil field development, urban development, and public infrastructure development. Within the Red Zone all cumulative development cannot exceed 10 percent. The oil strategy proposes an up-front, one-time compensation for continued oil field development within the administrative boundaries of the California Division of Oil, Gas, and Geothermal Resources (DOGGR) defined oil fields. The one-time compensation would provide 3,000 acres of compensation for future oil activities associated with 1,000 new wells (approximate 3 acres of disturbance per oil well) within the ''step out'' areas defined by DOGGR. The urban development strategy would allow certain permitted activities, and place a limit on the size of individual projects. Permitted activities would include residential development, commercial development; industrial development, private recreational facilities; miscellaneous facilities associated with urbanization, and electrical generating facilities supplying urban power. The strategy for public infrastructure would include certain activities undertaken by various departments of Kern County and special districts. The Water District Strategy allows operating and maintenance activities, and certain Water District development projects to be undertaken.

The third option, Direct Negotiation, would allow a project proponent to address compliance, under the Endangered Species Act of 1973, as amended, and the California Endangered Species Act, independent of this Plan.

The Plan also contains take avoidance and minimization measures that include, but are not limited to, relocation of individuals from the project site, avoidance of active San Joaquin kit fox natal dens, hand excavation of San Joaquin kit fox non-natal dens, and avoidance of active kangaroo rat burrow complexes by 50 feet. Safety Nets would also be established to ensure that no more than 10 percent disturbance would be allowed in each Red Zone; disturbance in the Green Zone would not exceed 25 percent; and a minimum width of 1 mile of connection between occurrences of contiguous natural habitat would be maintained throughout the Red and Green Zones. Safety Nets are also part of the Rare Plant Conservation Strategy designed to protect specific plant species with localized and restricted distributions.

Environmental Impact Statement/ Report

Kern County and the Service have selected URS Corporation to prepare the Draft EIS/EIR. The joint document will

be prepared in compliance with the National Environmental Policy Act and the California Environmental Quality Act. Although URS Corporation will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for National Environmental Policy Act purposes, and the County will be responsible for the scope and content of the document for California Environmental Quality Act purposes.

The EIS/EIR will consider the proposed action (issuance of section 10(a)(1)(B) Endangered Species Act permits), and a reasonable range of alternatives. Potential alternatives may include a compensation ratio unique to each of the three zones for habitat disturbance, assigning a relative conservation credit value per acre within each habitat zone, and a no action alternative. Under the compensation ratio alternative, the Red Zone lands would have a compensation ratio of 9:1; the Green Zone, 6:1; and the White Zone, 3:1. Compensation, in the form of habitat protection, would be in place prior to impacts. Under the conservation credit value alternative, a compensation ratio of not more than 3:1, based on conservation credits, would be used to determine compensatory requirements. Credits would be generated by the permanent preservation of habitat, restoration, granting of conservation easements, and other measures. The value of the credits and the amount of required compensation would be based on the conservation value of the land preserved and impacted, respectively. Under the no action alternative, the Service would not issue section 10(a)(1)(B) permits.

Potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources (oil and gas), water resources (treatment, storage, and conveyance systems), and economics could occur directly or indirectly with implementation of the proposed action and alternatives. Land development could cause incidental take of federally listed species for which the Plan proposes to provide a method of compensation that could achieve protection of covered species through habitat conservation. Also, the proposed Habitat Zones could potentially influence development patterns and associated land use decisions, oil and gas activities, and development of water systems within the affected area. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible.

Environmental review of the Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure that the full range of issues related to the permit requests are addressed and that all significant issues are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives to be addressed in the Draft EIS/EIR.

Dated: October 24, 2002.

David G. Paullin,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–27659 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BC–621–1830–PF–24 1A]

OMB Approval Number 1004–0187; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted a request to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) to extend the currently approved information collection listed below. On August 7, 2002, the BLM published a notice in the **Federal Register** (67 FR 51291) requesting comment on this information collection. The comment period ended on October 7, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

the OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0187), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, methanical, or other forms of information technology.

Title: Social Security Number/Taxpayer Identification Number Request.

OMB Approval Number: 1004–0187.

Bureau Form Number: 1372–6.

Abstract: We require the information to identify individuals or entity who do business with the BLM and to determine debt collection. We also collect this information for use by the Treasury Department to collect debts from individuals or entities who are 180 days or more late in payments owed the Federal Government.

Frequency: Once.

Description of Respondents: Those entities who do business with BLM which include licensees, permittees, lessees, and contract holders. Individuals who pay one-time recreation fees are not affected.

Estimated Completion Time: 1 minute.

Annual Responses: 5,000.

Application Fee Per Response: $0.

Annual Burden Hours: 83.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: October 18, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–27676 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2002, through April 30, 2003.

Group I. Exxon Mobil Corporation and ExxonMobil Exploration Company.

Group II. Shell Oil Company, Shell Offshore Inc., Shell Frontier Oil & Gas Inc., Shell Consolidated Energy Resources Inc., Shell Land & Energy Company, Shell Onshore Ventures Inc., Shell Offshore Properties and Capital II, Inc., Shell Rocky Mountain Production LLC, and Shell Gulf of Mexico Inc.

Group III. BP America Production Inc., BP Products North America Inc., BP Exploration & Production Inc., and BP Exploration (Alaska) Inc.

Group IV. TotalFinaElf E&P USA, Inc.

Group V. ChevronTexaco Corporation, Chevron U.S.A. Inc., Texaco Inc., and Texaco Exploration and Production Inc.

Dated: October 7, 2002.

R.M. Burton,

Director, Minerals Management Service.

[FR Doc. 02–27668 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–472]

In the Matter of Certain Semiconductor Devices and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

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 presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all 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-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain semiconductor devices and products containing same on May 22, 2002, based on a complaint filed by Toshiba Corporation (''Toshiba'') of Japan. 67 FR 37439–40. The respondents named in the notice of investigation are Samsung Electronics Co., Ltd., of Seoul, Korea; Samsung Semiconductor, Inc., of San Jose, California; and Samsung Electronics America, Inc., of Ridgefield Park, New Jersey (collectively ''Samsung''). Toshiba's complaint alleged that Samsung's products infringed claims of three U.S. patents held by Toshiba. On October 1, 2002, Toshiba and Samsung entered into a settlement agreement, and on September 19, 2002, Toshiba and Samsung filed a joint motion to terminate the investigation on the basis of the settlement agreement. The Commission investigative attorney supported the joint motion. On September 30, 2002, the presiding ALJ issued the ID (Order No. 10) granting the joint motion of Toshiba and Samsung to terminate the investigation on the basis of a settlement agreement. No party filed a petition to review the subject 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 section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 28, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27703 Filed 10–30–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Responsibility, Compensation, and Liability Act

In accordance with 28 CFR 50.7, notice is hereby given that on October 17, 2002, a proposed consent decree (the ''Bruno consent decree'' in *United States* v. *Union Pacific Railroad Company and Bruno Cooperative Association*, Civil Action No. 8:02-cv-483, was lodged with the United States District Court for the District of Nebraska.

In this action the United States sought injunctive relief and recovery of costs incurred and to be incurred by the United States responding to releases and threatened releases of hazardous substances from the Bruno Agricultural Coop/Associated Properties Site in Bruno, Nebraska. The proposed consent decree memorializes a settlement by which Union Pacific and Bruno Coop (the ''Settling Defendants''), both past owners of the Site (the Coop continues to own the Site), will implement and maintain a remedy chosen by the United States Environmental Protection Agency (''EPA'') to address groundwater contamination and restore a municipal drinking water well in Bruno, Nebraska. Settling Defendants also agree to fund one-half of the remedy cost and to reimburse a specified amount of the Site response costs provides that the United States Department of Agriculture (''USDA''), which formerly operated at the Site, also will fund one-half of the remedy cost and reimburse specified costs previously incurred by EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Bruno consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Union Pacific Railroad Company and Bruno Cooperative Association,* D.J. Ref. 90–11–3–06101.

The Bruno consent decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, NE 68102–1506, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. A copy of the Bruno consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $50.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Alternatively, you may request a copy of only the consent decree, without the attached appendices, by enclosing a check in the amount of $13.00 (25 cents per page reproduction cost). Please make checks payable to the Consent Decree Library.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27654 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 295–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a system of records entitled ''Executive Clemency Case Files/Executive Clemency Tracking System,'' JUSTICE/OPA–001. The purpose of publishing this notice is to document the functions of the Attorney General or his designee in receiving, investigating, and evaluating requests for executive clemency, preparing the necessary reports and recommendations from the Department of Justice to the President in clemency matters, serving as liaison with clemency applicants and the public on clemency matters, and advising the President on the historical exercise of the clemency power.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by December 2, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC, 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: October 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/OPA–001

SYSTEM NAME:

Executive Clemency Case Files/ Executive Clemency Tracking System.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper Files: The system contains the individual case files of persons who have applied for or been granted executive clemency, which may include the following: The clemency petition; character affidavits; investigatory material; court-related documents (*e.g.*, presentence reports, judgments of conviction, and court opinions); official court-martial documents (in military cases); prison progress reports and U.S. Parole Commission notices of action; media reports (*e.g.*, newspaper and magazine articles); official and other correspondence (both generated and received, whether solicited or unsolicited); and inter-agency and intra-agency reports and recommendations and decisional documents relating to individual clemency matters.

Computerized Records: The system also includes an automated database for tracking the handling of clemency cases from filing to final action. Information used to track such progress may include, but is not limited to, the petitioner's name, social security number, birth date, the date the petition was received, offense and sentencing information, the date of final action by the President, and other case-related information. Clemency case file notes may also be summarized and stored in an automated format, and may include any relevant information that would assist OPA in formulating clemency recommendations to the President or otherwise performing its duties more efficiently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in order to carry out the duties assigned by the President, pursuant to the power granted him under United States Constitution, Article II, section 2, to the Department of Justice in Executive Order of the President 30–1, dated June 16, 1893; and Executive Order of the President No. 11878 (published at 40 FR 42731), as delegated by the Attorney General to OPA in 28 CFR 0.35 and 0.36 (Attorney General Order No. 1012–83, published at 48 FR 22290), and as described in 28 CFR 1.1 through 1.11 (Attorney General Order No. 1798–93, published at 58 FR 53658; as amended at 65 FR 48381 and 65 FR 58223).

PURPOSE(S) OF THE SYSTEM:

Executive clemency case files are maintained by the Attorney General or his designee to facilitate and document the functions of the Attorney General or his designee in receiving, investigating, and evaluating requests for executive clemency; preparing the necessary reports and recommendations from the Department of Justice to the President in clemency matters; serving as liaison with clemency applicants and the public on clemency matters; and advising the President on the historical exercise of the clemency power. In addition, OPA or the Attorney General may provide other Departmental components records and information from clemency case files to the extent it is necessary to perform their functional responsibilities. For example, following a Presidential decision to grant clemency (and occasionally when clemency is denied), the Department's Office of Public Affairs typically makes appropriate disclosures of information to the public, including the name of the person granted clemency, the date of the grant of clemency, the nature of the relief granted (*e.g.*, commutation of sentence, remission of fine, reprieve, or pardon after completion of sentence), the date, sentence, and district of the conviction for which clemency was sought, the city and state of the applicant's current place of residence, and the names of his attorney and character affiants, if any. Automated tracking and retrieval systems enhance OPA's ability to maintain and use the information contained in clemency case files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

Disclosure of records in the clemency file of an individual who has applied for or been granted clemency, and

information contained in such documents, may be made to the following parties when it has been determined by OPA that such a need exists:

(a) The President, and members of his staff, in order to assist him in the exercise of his constitutional clemency power.

(b) Current and former government employees, including law enforcement and judicial authorities, whose comments on a particular clemency matter are solicited by OPA in connection with its investigation and review of a case, in order to enable such persons to formulate a response to the request.

(c) Contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) A private contractor or federal agency for the purpose of preparing bound and indexed volumes containing originals and/or photocopies of the official warrant of clemency granted each recipient of clemency as a public and official record of Presidential action.

(e) An appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting a violation or potential violation of law (whether civil, criminal, or regulatory in nature), in the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law.

(f) A federal, state, local, or tribal agency, including prosecution, corrections, sentencing, or parole authorities, in order to assist it in the execution of appropriate actions necessary to implement a Presidential clemency decision or in the performance of its official duties.

(g) A federal, state, local, or tribal agency or regulatory authority where OPA determines that the agency requires information relevant to a decision concerning the issuance, renewal, revocation, or suspension of a license, permit, grant, or other benefit, or other need for the information in the performance of its official duties.

(h) A court, administrative, or regulatory body when the records, or information derived therefrom, are determined by OPA to be arguably relevant to the litigation or proceeding, and when one of the following is a party to or has an interest in the litigation or proceeding: (1) OPA; (2) any employee of OPA in his or her official capacity; (3) any employee of OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States.

(i) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(j) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(k) The National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(l) A member of the public who has requested information concerning a specific, named person, provided that such a disclosure shall be limited to: whether a clemency application has been filed, and if so, the date on which it was filed, the type of clemency sought, the offense(s) for which clemency is sought, the date and court of conviction, the sentence imposed, the decision of the President to grant or deny clemency and the date of that decision, the administrative closure of a clemency request and the date of such closure.

(m) Former employees of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in electronic media via a client/server configuration. Computerized records are stored on hard disk, floppy diskettes, compact disks, magnetic tape, and/or on OPA's local area network. Paper records are stored in individual file folders and a secure file room or file cabinets with controlled access, and/or other appropriate GSA approved security containers.

RETRIEVABILITY:

Individual case files are retrieved primarily by the name of the person who applied for or was granted executive clemency. Case files also may be retrieved by a case file number assigned to each file. Information stored in the computerized case-tracking system is retrieved primarily by searching under the name of the person who applied for or was granted clemency, or on whose behalf clemency was sought. Information stored in the computerized case-tracking system may also be retrieved by the clemency case file number, or the applicant's Bureau of Prisons register number (if he was incarcerated at the time he applied for or was granted clemency).

SAFEGUARDS:

Paper records are secured through the use of safes, locked file cabinets, and/or restricted access to the space in which they are located. Electronic records are safeguarded in accordance with DOJ rules and policies governing automated systems security and access, including the maintenance of technical equipment in restricted areas and the required use of individual passwords and user identification codes to access the system.

RETENTION AND DISPOSAL:

Individual case files are stored in OPA's work area while the clemency request is pending, and generally for up to two years after the date of final decision. Closed case files are transferred to the Washington National Records Center in Suitland, Maryland one full year after the calendar year in which the case was closed. Except for copies of reports furnished to the President on particular clemency matters, clemency warrants and other documents reflecting the President's action in clemency cases, case files in any cases in which clemency is granted, case files in any other cases designated by the Pardon Attorney as having significant public interest, and notices issued by OPA to the Office of Public Affairs of the Department of Justice, case files at the Washington National Records Center are destroyed no sooner than 25 years after the case is closed, in accordance with Records Disposition Authority NC1–204–95–1, or successor Records Disposition Authority.

SYSTEM MANAGER(S) AND ADDRESSES:

Pardon Attorney, Office of the Pardon Attorney, U.S. Department of Justice,

500 First Street, NW., Suite 400, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to Office of the Pardon Attorney, U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted executive clemency case files from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked ''Privacy Access Request.'' Include in the request the general subject matter of the document. Provide full name, current address, date and place of birth, signature (which must be either notarized or submitted under penalty of perjury) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted executive clemency case files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information include: individual applicants for clemency, their representatives, and persons who write, confer with, or orally advise OPA concerning those applicants; investigatory reports of the Federal Bureau of Investigation, the Drug Enforcement Administration, the Internal Revenue Service, and the Immigration and Naturalization Service, and other appropriate government agencies; records of the Bureau of Prisons; reports of the Armed Forces; presentence reports provided by the Bureau of Prisons or the federal Probation Offices; reports of the U.S. Parole Commission; comments and recommendations from current and former federal and state officials; and employees of the Department of Justice and the White House.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register**.

[FR Doc. 02–27597 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in United States v. Computer Associates International, Inc., et al. Exhibit

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States of America* v. *Computer Associates International Inc. and Platinum* technology *International,* inc., Civil Action No. 1:01CV02062 (GK), filed in the United States District Court for the District of Columbia, together with the United States' response to the comment.

Copies of the comment and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations.

United States' Response to Public Comments

Pursuant to Section 5(d) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h)(the ''Tunney Act'')), the United States responds to public comments received regarding the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Background

On September 28, 2001, the United States filed a civil antitrust Complaint alleging that the Merger Agreement between Defendants Computer Associates International, Inc. (''CA'') and Platinum *technology* International, *inc.* (''Platinum'') had the effect of lessening or eliminating competition between them in the sale of certain software products in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleged that, prior to March 1999, Platinum aggressively competed with CA in the development and sale of numerous software products, including mainframe systems management software products. On March 29, 1999, CA and Platinum entered into a Merger Agreement pursuant to which CA would purchase all issued and outstanding shares of Platinum through a $3.5 billion cash tender offer.[1]

The Merger Agreement set forth numerous covenants made by Platinum, as part of the agreement to be acquired, regarding how it would conduct its business during the period between the signing of the Merger Agreement and the closing of the acquisition transaction (the pre-consummation period). Under the Merger Agreement, CA and Platinum agreed that Platinum would not offer discounts greater than 20% off list prices for its software products and consulting services unless CA approved the discount. Before the merger announcement, Platinum commonly gave discounts over 20% for its software products and consulting services. In furtherance of this Agreement, CA installed one of its vice presidents at Platinum's headquarters to review Platinum's proposed customer contracts and exercise authority to approve or reject proposed contracts offering discounts greater than 20%. CA also obtained prospective, customer-specific information regarding Platinum's bids, including the name of the customer, products and services offered, list price, discount, and the justification for any discount. Platinum placed no limits with respect to CA's use of this information. CA used this information to monitor Platinum's adherence to the Merger Agreement's limitation on discounts and to exercise its authority to approve or reject any proposed contract that offered discounts over 20%.

The United States filed a Complaint on September 28, 2001, alleging that the provisions of the Merger Agreement relating to CA's approval of Platinum discounts prior to consummation of the merger violated section 1 of the

[1] On May 25, 1999, the United States filed a Complaint alleging that CA's proposed acquisition of Platinum would eliminate substantial competition and result in higher prices in certain mainframe systems management software markets. *See United States* v. *Computer Associates International Inc., et al.* (D.D.C. 99–01318 (GK)). Simultaneously with the filing of the Complaint, the parties reached an agreement that allowed CA and Platinum to go forward with the merger, provided that CA sell certain Platinum mainframe systems management software products and related assets. Thereafter, CA accepted for payment all validly tendered Platinum shares and the Defendants consummated their merger.

Sherman Act. On April 23, 2002, the United States filed a Stipulation and proposed Final Judgment designed to prevent the recurrence of the alleged Sherman Act section 1 violation.[2] The proposed Final Judgment prohibits CA and future merger partners from agreeing to establish the price of any product or services offered in the United States to any customer during the pre-consummation period. The proposed Final Judgment also would prevent the repetition of the conduct CA employed to facilitate its agreement with Platinum to establish prices. Specifically, the proposed Final Judgment prohibits CA from entering into an agreement to review, approve or reject customer contracts during the pre-consummation period, and prohibits CA from entering into an agreement that requires a party to provide ''non-material'' bid information to another party.

The proposed Final Judgment identifies certain price-related agreements that will not violate the Final Judgment. The proposed Final Judgment does not prohibit agreements that the to-be-acquired party, during the pre-consummation period, act in the ordinary course of business and not engage in conduct that would cause a material adverse change in the to-be-acquired party's business. CA and a merger partner may also conduct reasonable due diligence and may exchange ''material'' bit information, subject to appropriate use and confidentiality restrictions. Finally, the proposed Final Judgment permits certain joint pricing and bidding activities, provided that such conduct would be lawful independent of the proposed merger.

The Court may enter the proposed Final Judgment following compliance with the Tunney Act.[3] Pursuant to the Tunney Act, the proposed Final Judgment and CIS were filed with the Court on April 23, 2002. A summary of the terms of the proposed Final Judgment and CIS were published for seven consecutive days in *The Washington Post* from June 6, 2002 through June 12, 2002. The proposed Final Judgment and CIS were published in the **Federal Register** on June 18, 2002 at 67 14472 (2002). the 60-day period for public comments on the proposed Final Judgment began on June 18, 2002 and expired on August 19, 2002. During that period, one comment was received.

II. Response to Public Comment

The only comment was filed by The Center for the Advancement of Capitalism (''CAC''), a non-profit organization with the mission of providing analysis based on Ayn Rand's philosophy of objectivism.[4] A true and correct copy of CAC's comment is attached as Exhibit 1. CAC states that the antitrust laws represent a ''system where the federal government has assumed the unconstitutional role of dictating which business practices are permitted, without having to actually show that a business's actions violate the *rights* of another party.'' CAC Comment at 2. CAC further argues that the enforcement of the antitrust laws ''completely ignores the principle of individual rights which animate our Constitution and republican form of government.'' *Id.* at 6. In a similar vein, CAC argues that the antitrust laws, to the extent they protect consumers, violate the rights of property owners and producers. *Id.* at 3, 6–8. According to CAC, the antitrust laws should permit businesses to take any action, ''[s]o long as the actions are voluntary, and do not constitute an act of force against another individual or corporation'' *Id.* at 7.

CAC, in essence, challenges the constitutionality of the Sherman Act and advocates for a form of laissez-faire capitalism unregulated by the Government. The United States disagrees with CAC's position. The Supreme Court has, on numerous occasions upheld the constitutionality of the Sherman Act and the prohibition of section 1 of the Act against any contract, combination or conspiracy that ''unreasonably'' deprives consumers of the benefits of competition or that would otherwise result in higher prices or inferior products and services. *See Standard Oil Co.* v. *United States*, 221 U.S. 1, 50, 58 & 68–70 (1911); *see also United States* v. *Joint Traffic Ass'n,* 171 U.S. 505, 570–73 (1898). In any event, challenging the constitutionality of the Sherman Act is far beyond the scope of this Tunney Act proceeding. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1459 (D.C. Cir. 1995) (Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint).

CAC also argues that the proposed Final Judgment constitutes a ''fraud'' because it is based on the premise that ''merging companies should continue to act independently of one another even when that is not the case in actual reality.'' CAC Comment at 5. CAC further argues that the proposed Final Judgment will prevent CA from entering into merger agreements for the 10-year term of the Final Judgment because any joint pre-consummation conduct would be ''*per se*'' illegal conduct in the eyes of the DOJ.'' *Id.* at 6. CAC misconstrues the allegations in the Complaint and the proposed remedy.

The United States, of course, recognizes that the relationship between two formerly independent firms changes when they announce plans to merge. The fact that two firms have signed a merger agreement, however, does not excuse them from their obligation to comply with the antitrust laws during the pre-consummation period. Section 1 of the Sherman Act prohibits pre-merger agreements among competitors that restrain competition. Thus, the Complaint alleges that CA and Platinum entered into an agreement to limit Platinum's discounts during the pre-consummation period and that this agreement lessened competition in certain software markets. Moreover, neither the Complaint nor the proposed Final Judgment stand for the proposition that all pre-consummation agreement are ''*per se*'' illegal. The Final Judgment only prohibits agreements on price that are likely to restrict competition.

III. Conclusion

CAC urges the Court to find that the proposed Final Judgment is not in the public interest and requests that the Court deny entry of the proposed Final Judgment. The United States has concluded that the proposed Final Judgment reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this Response To Comments and submission of the United States' Certification of Compliance with the Tunney Act, the United States intends to request entry of the proposed Final Judgment upon the Court's determination that entry is in the public interest.

Dated: September 19, 2002.

Respectfully submitted.

[2] The proposed Final Judgment also requires CA and Platinum to pay a civil penalty to resolve the allegation in the Complaint that the defendants violated Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (''HSR Act''), 15 U.S.C. 18a. For the reasons stated in the Competitive Impact Statement (''CIS''), filed on April 23, 2002, the United States does not believe that the payment of civil penalties under the HSR Act is subject to the Tunney Act. CIS at 11 n.1. Consequently, the civil penalties component of the proposed Final Judgment is not open to public comment.

[3] The CIS sets out the standard to be applied by the Court in determining whether entry of the proposed Final Judgment is in the public interest. CIS at 21–24.

[4] Ayn Rand, a novelist-philosopher, first expressed her philosophy of objectivism in the best-selling novels. *The Fountainhead* (1943) and *Atlas Shrugged* (1957). On the issue of capitalism, she has stated: ''When I say 'capitalism,' I mean a pure, uncontrolled, unregulated laissez-faire capitalism with a separation of economics, in the same way and for the same reasons as a separation of state and church.'' ''The Objectivist Ethics'' in *The Virtue of Selfishness* (1964).

Renata B. Hesse, N. Scott Sacks, James J. Tierney, Jessica N. Butler-Arkow, David E. Blake-Thomas,
Attorneys, U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530. 202/307–0797.

Certificate of Service

I hereby certify that a copy of the foregoing United States; Response To Public Comments was hand delivered this 19th day of September, 2002 to: Counsel for Computer Associates International, Inc. and Platinum *technology* International, *inc.* Richard L. Rosen, Esquire, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 2004–1206. Fax: 202/547–5999.

James J. Tierney.

The Center for the Advancement of Capitalism

August 9, 2002.

Ms. Renata B. Hesse,
Chief, Networks and Technology Section, United States Department of Justice, Antitrust Division, 600 E Street, NW., Suite 9500, Washington, DC 20530.
Re: Proposed Final Judgment in *United States of America* v. *Computer Associates International, Inc., et al.*, Civil No. 1:01CV02062 (GK)

Dear Ms. Hesse: On behalf of the Center for the Advancement of Capitalism [1] (''CAC''), I hereby transmit to you the following public comments with respect to the above captioned matter now pending in the United States District Court for the District of Columbia. In accordance with 15 U.S.C. 16(d), CAC requests that its comments in this matter be included in the appropriate public record, and that they be considered by the Department of Justice and the Court in determining whether the proposed Final Judgment is in the public interest.

I

CAC is a non-profit corporation organized under the laws of the District of Columbia and exempt from taxation under 26 U.S.C. 501(c)(4). The mission of CAC is to provide analysis and commentary to policymakers, the judiciary, and the general public on matters relevant to individual rights and economic freedom. CAC presents an integrated approach to contemporary issues by applying Ayn Rand's philosophy of Objectivism.

For the past four years, CAC has provided a consistent and principled opposition to the continued enforcement of the antitrust laws of the United States.[2] We have argue that the antitrust laws violate the individual rights of businessmen, the protection of which is mandated by the United States Constitution. Instead, what now exists in the United State—and in this particular case—is a system where the federal government has assumed the unconstitutional role of dictating which business practices are permitted, without having to actually show that a business's actions violate the *rights* of another party. Indeed, as the case against Computer Associates and Platinum Technology (''defendants'') demonstrate, most antitrust cases have no actual victim, save for perhaps the ego of the attorneys representing the Department of Justice (''DOJ'').

After a careful review of the public record in this case, CAC believes that the United States has failed to demonstrate why this prosecution was justified in the first instance. Furthermore, we believe the terms of the proposed Final Judgment have been falsely represented to the public as being injunctive and remedial in nature, when in fact they are punitive. Since the public interest cannot possibly be served by punishing a company which has committed no crime and for other reasons outlined below, CAC concludes that entry of the proposed Final Judgment is not in the public interest, and that the DOJ should withdraw from its agreement and dismiss the complaint against the defendants with prejudice. In the alternative, CAC would request the District Court to deny entry of the proposed Final Judgment under 15 U.S.C. 16(e).

II

The central claim of the DOJ's complaint is that the defendants entered into a merger agreement which denied consumers the benefit of full competition during the ''pre-consummation period,'' that is to say, prior to the closing of the actual merger. The DOJ defines the pre-consummation period as ending either with the closing date, or earlier if termination is granted by the DOJ under the Hart-Scott-Rodino Act.[3] Under the government's antitrust regimen, it seems, companies have an ''obligation to compete independently'' [4] even after they've agreed to stop competing out of mutual self-interest. What this case deals with then is how companies are to be permitted going about the task of combining their operations without running afoul of the DOJ's pathological (and statutory) need to control every aspect of private commerce.

Under the merger agreement voluntarily entered into by the defendants. Platinum technology officials agreed to not offer their customers a discount of more than 20% off list prices without the prior written consent of Computer Associates.[5] Since this provision applied during the pre-consummation period (but after the agreement itself was signed and made known to the public), the DOJ claims that the defendants denied customers ''the benefit of free and open competition'' in violation of 15 U.S.C. 1.

CAC disagrees. For one thing, the DOJ is employing a very static definition of ''competition'' to support its thesis. Under the DOJ's theory of antitrust, competition is a synonym for low prices—any action which might lead to a rise in out-of-pocket cost to the consumer is deemed anticompetitive, and thus illegal under the Sherman Act. This theory violates the property rights of producers. The DOJ is arguing that consumers have an automatic 'right' to any item which a producer puts on the market, and that this interest should trump any property right claimed by the producer.

Unlike the corner the DOJ has put itself into here, competition in the free market is a far more complex and dynamic entity that does not wholly revolve around retail prices. Competition incorporates all activities by which a business seeks to increase its profitability. These activities include the development of new or improved products, reduction of operating costs, increasing efficiency in the production process, marketing, and hiring of talented personnel. None of these activities were incorporated into the DOJ's analysis relevant to this case, or if they were, the United States has declined to specify how the defendants' alleged actions compromised competition in the integrated sense of the term. The complaint focuses solely on the issue of prices charged to consumers.

Section IV of the proposed Final Judgment would prohibit Computer Associates, in any potential future merger, from establishing price discount policies for a to-be-acquired company during the pre-consummation period. This requirement does nothing to promote competition. It simply creates a temporary, artificial price support for products sold by the hypothetical other company pending the closing of the merger. Section IV does not prevent such potential mergers from taking place, nor does it govern the conduct of the companies following consummation of the merger. If the DOJ were genuinely concerned about minimizing the potential for higher consumer prices in the marketplace, they could have sought to prevent the merger itself from ever taking place through civil litigation before the District Court, or at a minimum attempted to require Computer Associates and Platinum Technology to divest certain portions of their business to third parties as a precondition of government approval. Such efforts would have rendered the need for the present action moot, since competition—or at least the DOJ's bastardized version of competition—would be maintained on a more tangible and permanent basis.

III

The answer to our inquiry, interestingly enough, is that the DOJ did pursue a previous civil action to dictate the conditions of the Computer Associates-Platinum Technology merger.[6] Yet not content to rest on its laurels, the DOJ went on to initiate the current action as a means of further securing the public interest, or so they would have us believe. In fact, based on the government's earlier success, it seems more likely that the United States is seeking to make an example out of Computer Associates to serve as a warning to other companies. Such a punitive motive, CAC believes, is not consistent with serving the public interest.

Because the DOJ's hands were less than clean in reaching the proposed consent order,

[1] Prior to August 1, 2002, CAC was known as the Center for the Moral Defense of Capitalism.

[2] *See, generally,* 15 U.S.C. 1–2.

[3] 15 U.S.C. 18a.

[4] Competitive Impact Statement, 67 FR 41472 at 41477 (2002).

[5] *Id.* at 41475.

[6] *United States* v. *Computer Associates, et al.,* No. 99–01318 (D.D.C.).

Computer Associates is left with a very disturbing prospect. In acceding to the relief terms of the proposed final judgment, Computer Associates is undermining its own ability to successfully compete in the marketplace by acknowledging, then perpetuating for the ten-year term of the agreement, an outright fraud. The fraud we refer to is the premise of the DOJ's prosecution—that merging companies should continue to act independently of one another even when that is not the case in actual reality.

No matter how much it wishes otherwise, the DOJ cannot alter reality, although it can certainly use its compulsory force to evade it, as is the case here. When two companies agree to merge, the very culture of their previously exclusive operations are altered at a fundamental level. The extent to which this is reflected in the pre-consummation or post-consummation period varies from company to company, but the essential principle is the same. In entering into its pre-consummation agreement with Platinum, Computer Associates acted in the honest interest of its shareholders, employees and customers, by openly acknowledging its new relationship with Platinum, and working to bring the two companies together in an efficient and rational manner.

In contrast, the new standards imposed by the DOJ in the consent agreement practically requires Computer Associates to never enter into another merger agreement except by fraud and duplicity. Since to acknowledge a coming together of companies before consummation is now *per se* illegal conduct in the eyes of the DOJ, there is no incentive for Computer Associates to act with integrity or honesty. Alternatively, of course, Computer Associates could simply choose not to merger with any company for the duration of the consent agreement, in which case they would potentially defraud their own stockholders by refusing to act in a manner which could increase the company's profitability and productive capacity. In either case, CAC sees no benefit to subscribing to the DOJ's delusional view of corporate mergers.

IV

Finally, CAC objects to the DOJ's construction of rights in this case. As with all antitrust litigation shepherded by the United States, the DOJ can only make sense of its argument when it completely ignores the principle of individual rights which animate our Constitution and republican form of government.

The DOJ defines the public interest, for purposes of antitrust litigation, as being one-in-the-same with the ''rights'' of consumers, the nebulous class of individuals who consume (or attempt to consume) the goods and services provided by economic producers. In this case, CA and Platinum's activities were deemed unlawful because the companies pre-consummation activities had the effect of ''denying'' the companies' customers ''the *benefits* of free and open competition'' (emphasis added). In the eyes of DOJ and the judiciary, ''benefits'' gets elevated to the status of ''rights'', and they are given such weight as to render the actual economic rights of producers to be virtually non-existent.

As has been discussed, *infra,* trade does involve, and indeed require, a voluntary exchange of goods and services which benefit all parties to the transaction. If nobody received benefits, then there would be no incentive to trade in the first place. But a benefit should never be confused with a ''right.'' Actual rights are ''moral principles which define and protect a man's freedom of action, but impose no obligation on other men.[7]'' A right is something which all individuals inherently possess as part of their humanity. A benefit, in contrast, is something which an individual receives at the behest of another, for whatever reason or motive: A will confers benefits on a beneficiary; a company provides health insurance for its employees; the local sports arena permits children to use the facility a few days a week. None of these things result from the beneficiary's right to enjoy the benefit. The right is that of the owner to dictate the use of his property, not of an outside party to demand use of property which is not his.

Computer Associates and Platinum had no obligation to ''provide'' competition for consumers. They chose to do so voluntarily for a number of years, and, when the companies decided it was in their self-interest to cease one-on-one competition, they did so. They did not consider their obligations to the consumer, because they had none, outside of pre-existing contracts (which presumably were honored). What was considered, as in any merger, was the benefits that would be generated by the combination of the two companies. The DOJ's fault lies in considering ''benefits'' to be limited to the price paid by a consumer at a given moment in time. The government's analysis failed to account for the potential benefits generated by the merger, including the actions of CA and Platinum during the pre-consummation period.

But even if no benefits could be demonstrated consequential to the merger, the United States would still be wrong to block the efforts of CA and Platinum, because it is not morally incumbent upon a corporation to positively demonstrate the benefits of their actions to a government agency. So long as the actions are voluntary, and do not constitute an act of force against another individual or corporation, a transaction between private parties is an extension of their right to own and use property.

The alternative theory, presented by DOJ's enforcement of antitrust law, suggests the opposite: That property is not truly privately held, and that the interests of the ''consumer'' are paramount in any economic relationship with a producer. Under a capitalist system, the producers are the property owners who leverage their holdings to create wealth. Under the consumerist model enforced by DOJ, in contrast, producers hold and create wealth as part of a ''public trust'', and the consumer has the ultimate right to dictate how the wealth is distributed. This is why the DOJ spends an inordinate amount of time focusing on prices, and why any increase that takes place is immediately suspect under the Sherman Act.

Consumers, of course, do have certain ''rights'' in the marketplace. They have a right to buy or not buy the goods and services of their choosing. They have a right to contract free of coercion, and the right to seek redress of grievances before the law if that contract is breached. What consumers do not have the ''right'' to, however, is to unilaterally dictate the terms by which a producer offers his goods and services for sale. The DOJ advocates the opposite, as a result, it routinely intervenes in the acts of producers in an attempt to secure prices and conditions that are more favorable to the consumer, regardless of how this interference violates the property rights of the producers.

CAC believes that the people of the United States are better off living in a capitalist economy than in a consumerist system. Therefore, we find the terms of the proposed Final Judgment are not in the public interest, because the injunctive relief provided would recognize non-existent consumer rights at the expense of the legitimate rights of Computer Associates, and that in turn compromises the rights of all Americans.

For the foregoing reasons, CAC believes the public interest here would best be served by the DOJ withdrawing from the proposed final judgment and dismissing the compliant against Computer Associates and Platinum Technology with prejudice.

Respectfully Submitted,

S.M. Oliva,

Director of Federal Affairs, The Center for the Advancement of Capitalism.

[FR Doc. 02–27222 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–11–M

[7] Ayn Rand, *Man's Rights,* in Capitalism: the Unknown Ideal (1966).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include proposed changes to the definition of Administration of Criminal Justice in part 20 of title 28, Code of Federal Regulations; the proposal to establish a public website for National Crime Information Center ''Property and

Wanted Person Files''; and DNA Indicator in the Interstate Identification Index segment of the Integrated Automated Fingerprint Identification System (IAFIS). Discussion will also include the status on the National Crime Prevention and Privacy Compact, status of the Joint Task Force on Rap Sheet Standardization, the question of whether the Crime Index is a True Indicator of Crime, Immigration and Naturalization Service Alien Initiative, the Department of Justice Global and Information Sharing Project, and other issues related to the IAFIS, NCIC, Law Enforcement Online, National Instant Criminal Background Check System and Uniform Crime Reporting programs.

The meetign will be open to the public on a first-come first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise, at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 9 a.m. until 5 p.m. on December 4–5, 2002.

ADDRESSES: The meeting will take place at the Inter-Continental Houston, 2222 West Loop South, Houston, Texas, telephone (713) 627–7600.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Diane M. Shaffer, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26309–0149, telephone (304) 625–2615, facsimile (304) 625–5090.

Roy G. Weise,

Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 02–27706 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2237–02; AG Order No. 2624–2002]

Extension of the Designation of Sierra Leone Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's most recent extension of the designation of Sierra Leone under the Temporary Protected Status (TPS) program expires on November 2, 2002. This notice announces the Attorney General's decision to extend the TPS designation for Sierra Leone for an additional period of 12 months, as provided by law, and contains information regarding the 12-month extension of TPS.

DATES: The TPS designation for Sierra Leone is extended for a period of 12 months, from November 2, 2002, through November 2, 2003. The re-registration period commences on October 31, 2002, and will remain in effect until December 30, 2002 (inclusive of such end date).

FOR FURTHER INFORMATION CONTACT: Naheed A. Qureshi, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation and Extension of TPS?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part thereof) for TPS. The Attorney General may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS that is granted on the basis of such a determination. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state no longer meets the conditions for TPS designation, the Attorney General shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Attorney General does not make the required determination prior to the 60-day period prescribed by statute, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Is the Sierra Leone TPS Designation Being Extended?

The Administration, including the Departments of State and Justice, as well as the National Security Council, is actively and closely monitoring conditions in and developments relating to Sierra Leone. The United States Government recognizes that there has been considerable progress toward renewed stability in Sierra Leone. In January 2002, the country's decade-long war was declared over. More than 45,000 combatants have been demobilized. In May 2002, violence-free elections were successfully completed. More recently, on September 24, 2002, the United Nations Security Council voted unanimously to adopt a resolution extending the mandate of the United Nations Assistance Mission in Sierra Leone (UNAMSIL) for six months, while implementing the Secretary General's recommendation for a phased, gradual draw-down of UNAMSIL. The resolution urges UNAMSIL to carry out Phases 1 and 2 of the draw-down over the next eight months, which would reduce UNAMSIL's troop strength from 17,500 to 13,000 (a reduction of approximately 25%). In addition, the situation in Liberia, which affects regions of neighboring Sierra Leone, remains unstable. On October 1, 2002, the Attorney General designated Liberia under the TPS program.

The Attorney General consulted with appropriate agencies of the Government, but due to the nature of the situation in Sierra Leone, has not made a determination whether the conditions for TPS designation continue to be met. Accordingly, this Federal Register notice does not contain the Attorney General's determination regarding whether or not the conditions in Sierra Leone continue to satisfy the statutory standards for an extension of TPS under section 244(b)(3)(A) of the Act. Instead, as a result of the 60-day requirement prescribed by statute, this notice provides that the previous TPS designation for Sierra Leone has been extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). As an exercise of discretion, the Attorney General has decided to extend TPS for 12 months, as

allowed under that provision, rather than the minimum period of six months in order to allow a sufficient period of time to monitor further developments in Sierra Leone.

No later than 60 days prior to the November 2, 2003, expiration of this extension, the Attorney General will determine whether the conditions for TPS designation continue to be met in Sierra Leone at that time, or whether TPS should be terminated at the time the current extension of TPS expires. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If I Currently Have TPS Benefits Through the Sierra Leone TPS Program, Must I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Sierra Leone TPS program, your benefits will expire on November 2, 2002. While the designation of Sierra Leone under the TPS program was extended automatically by virtue of statute, individual TPS beneficiaries must still comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2003. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS benefits under the Sierra Leone TPS program who wish to maintain such benefits must apply for an extension by filing (1) Form I–821, Application for Temporary Protected Status, without the filing fee; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765. Children beneficiaries of TPS, who have reached the age of 14 but were not previously fingerprinted, must pay the fifty dollar ($50) fingerprint fee upon their next application for extension.

Submit the re-registration package to the Service district office that has jurisdiction over your place of residence during the 60-day re-registration period that begins October 31, 2002, and will remain in effect until December 30, 2002.

If	Then
You are applying for an Employment Authorization Document that is valid through November 2, 2003. . .	You must complete and file Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document. . .	You must complete and file Form I–765 with no fee.

Employment authorization documentation: An applicant who seeks employment authorization documentation must submit Form I–765 with the $120 fee. An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

Fee waiver: Applicants may request that certain fees be waived, in accordance with the regulations at 8 CFR 244.20.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit, and vice versa. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of Sierra Leone (or Aliens Having No Nationality Who Last Habitually Resided in Sierra Leone) Who Entered the United States After November 9, 1999, To Apply for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Sierra Leone under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Sierra Leone (or an alien who has no nationality and who last habitually resided in Sierra Leone);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and,

(4) Be both admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and also not ineligible under section 244(c)(2)(B) of the Act. 8 U.S.C. 1254a(c)(2)(A), 8 U.S.C. 1254a(c)(2)(B).

Additionally, the applicant must be able to demonstrate that, during the re-designation registration period from November 9, 1999, through November 2, 2000, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2003?

At least 60 days before this extension of TPS expires on November 2, 2003, the Attorney General will review conditions in Sierra Leone and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Attorney General terminates the TPS designation, TPS beneficiaries will return to the same immigration status they

maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Automatic Extension of the Designation of Sierra Leone Under the TPS Program

Pursuant to section 244(b)(3)(C) of the Act, I order as follows:

(1) The designation of Sierra Leone for TPS under section 244(b) of the Act is extended for a period of 12 months, from November 2, 2002 through November 2, 2003.

(2) I estimate that there are approximately 2,209 nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who currently receive TPS benefits and who are eligible to re-register for benefits under this extension.

(3) To maintain TPS, a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who previously has applied for or received TPS benefits must re-register for TPS during the 60-day re-registration period from October 31, 2002 until December 30, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2003, the Attorney General will review conditions in Sierra Leone and determine whether the conditions for TPS designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3).

(6) Information concerning the extension of the TPS program for Sierra Leone will be available at local Service offices upon publication of this notice and through the Immigration and Naturalization Service National Customer Service Center at 1–800–375–5283. This information will also be published on the INS web site at *http://www.ins.usdoj.gov.*

Dated: October 28, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–27796 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–10–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Federal Advisory Committee Meeting

AUTHORITY: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609.

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation

ACTION: Notice of meeting.

SUMMARY: The National Environmental Conflict Resolution (ECR) Advisory Committee, of the U.S. Institute for Environmental Conflict Resolution, will conduct a public meeting on Tuesday and Wednesday, November 19–20, 2002, at the Pima-Catalina meeting rooms of the Windmill Inn of Tucson, 4250 N. Campbell Avenue, Tucson, AZ 85718. The meeting will occur from 8 a.m. to approximately 5 p.m. on November 19, and from 8 a.m. to approximately 3 p.m. on November 20.

Members of the public may attend the meeting in person. Seating is limited and is available on a first-come, first-served basis. During this meeting, the Committee will discuss: Committee organizational details; background on the Institute; opportunities and challenges for the Institute; use of ECR processes and collaborative decision making in relation to National Environmental Policy Act requirements; best practices for ECR; and follow-up work for the Committee and Institute staff. A site visit and discussion of natural resource management and NEPA during the afternoon of November 19, 2002, is anticipated. The location of the site visit will be announced at the meeting.

Members of the public may make oral comments at the meeting or submit written comments. In general, each individual or group making an oral presentation will be limited to five minutes, and total oral comment time will be limited to one-half hour each day. Written comments may be submitted by mail or by e-mail to *memerson@ecr.gov.* Written comments received in the Institute office far enough in advance of a meeting may be provided to the Committee prior to the meeting; comments received too near the meeting date to allow for distribution will normally be provided to the Committee at the meeting. Written comments may be provided to the Committee until the time of the meeting. Comments submitted during or after the meeting will be accepted but may not be provided to the Committee until after that meeting.

FOR FURTHER INFORMATION: Any member of the public who desires further information concerning the meeting or wishes to submit oral or written comments should contact Melanie Emerson, Program Associate, U.S. Institute for Environmental Conflict Resolution, 110 S. Church Avenue, Suite 3350, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *memerson@ecr.gov.* Requests to make oral comments must be in writing (or by e-mail) to Ms. Emerson and be received no later than 5 p.m. Mountain Standard Time on Tuesday, November 12, 2002. Copies of the draft meeting agenda may be obtained from Ms. Emerson at the address, phone and e-mail address listed above.

Dated: October 24, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 02–27651 Filed 10–30–02; 8:45 am]

BILLING CODE 6820–FN–P

NUCLEAR REGULATORY COMMISSION

[IA 02–018]

In the Matter of Mr. Kenneth M. Baab; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Kenneth M. Baab (Mr. Baab) is Vice President of Advanced Medical

Imaging and Nuclear Services (AMINS). AMINS is the holder of Byproduct Nuclear Material License No. 37–30603–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes AMINS to possess and use any byproduct material listed in 10 CFR 35.100 and 10 CFR 35.200. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

II

On November 30, 2001, the NRC conducted an inspection at AMINS. During the inspection, violations of NRC requirements were identified. The most significant violations involved the receipt, possession, and use of NRC licensed material between March 2001 and November 2001, without an Authorized User (AU) and Radiation Safety Officer (RSO) at the facility, contrary to 10 CFR 35.11(a) and 10 CFR 35.21. As a result of this finding, the NRC issued a Confirmatory Action Letter (CAL) on December 3, 2001, confirming AMINS commitment, in part, to: (1) Immediately place all byproduct material in its possession in secured storage; and (2) cease all licensed activities until AMINS retained an AU and RSO, and received approval (via a license amendment from the NRC) for the changes to bring the licensee's program into full compliance with 10 CFR part 35. The NRC subsequently issued an Order Suspending the license on December 14, 2001, as well as a Demand for Information on December 21, 2001, requesting information, in part, as to why the license should not be revoked.

Between December 5, 2001 and March 27, 2002, the NRC Office of Investigations conducted an investigation of activities at the AMINS facility. During the investigation, the NRC determined that, (1) Mr. Babb, the AMINS Vice President (VP), and another individual (the Chief Operating Officer (COO)) operated the AMINS facility with the knowledge that the facility did not have an AU and RSO in deliberate violation of NRC regulations; (2) Mr. Babb and the COO knowingly caused false and misleading information to be provided to a radiopharmaceutical company to acquire the radiopharmaceuticals needed for diagnostic testing of AMINS patients; and (3) the records maintained by AMINS were inaccurate, since they named a physician as the AU, when, in fact, the individual was not acting as the AU. The evidence to support these conclusions include:

- The AMINS VP prepared the NRC license application in October 2000, with the aid of a consulting physicist, and named an individual as the AU and RSO on the application; however, the individual named on the application stated that he was never employed by AMINS and never performed the duties of the AU and RSO at AMINS.
- In March 2001, AMINS staff began performing licensed activities, including ordering and administering radiopharmaceuticals to patients on approximately 590 occasions between June 2001 and November 2001, using the name of an individual as the requesting AU who, in fact, was not the AU and had never been hired by AMINS.
- In October 2001, a consulting physicist conducted an audit that revealed that the duties of the AU/RSO had not been performed, and he briefed Mr. Babb and the COO regarding the problem at the end of the audit, yet NRC licensed activities continued until the NRC inspection on November 30, 2001.
- Mr. Babb, when interviewed by the OI investigator, admitted that he knew the facility was required to have an AU and RSO and knew that it was a problem in June 2001, but Mr. Babb did not take action to cease all licensed activities. In addition, he admitted to the OI investigator that there were financial considerations associated with keeping the facility open.

III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an employee of a licensee from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. 10 CFR 35.11 requires, in part, that a person shall not use byproduct material for medical use except in accordance with a specific license or under the supervision of an authorized user as provided in 10 CFR 35.25. 10 CFR 35.21(a) requires that a licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. Further, 10 CFR 30.9 requires, in part, that information required to be maintained by the license shall be complete and accurate in all material respects.

Based on the inspection and investigation, the NRC has concluded that Mr. Baab, as the VP of AMINS, violated 10 CFR 30.10. Specifically, Mr. Baab violated 10 CFR 30.10(a)(1) in that he engaged in deliberate misconduct that caused the Licensee to violate NRC requirements by: (1) Operating the AMINS facility without an AU, contrary to 10 CFR 35.11; (2) operating the AMINS facility without an RSO, contrary to 10 CFR 35.21(a); and (3) maintaining inaccurate records, contrary to 10 CFR 30.9, in that the records (which were used to order the radioactive material from a radiopharmacy) indicated that the material was being ordered by a physician listed as the AU, when in fact, the individual had never been employed by the licensee. The violations are significant because, by allowing licensed activities to continue even though he knew that AMINS did not have an AU and RSO, Mr. Babb's actions created the potential for unnecessary radiation exposures to workers and members of the public.

IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Baab's deliberate violation of Commission regulations raises serious questions as to whether he can be relied upon to comply with NRC requirements including the maintenance of complete and accurate information.

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 would be protected if Kenneth M. Baab were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Kenneth M. Baab be prohibited from any involvement in NRC-licensed activities for a period of one year. Since licensed activities at AMINS ceased on December 14, 2001, with the NRC issuance of the Order Suspending License, and since Mr. Babb has not been involved in licensed activities since that time, the one-year prohibition period will retroactively begin on December 14, 2001, and end on December 14, 2002. However, if Kenneth M. Baab is currently involved in NRC-licensed activities at any NRC licensed facility, Mr. Baab must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Baab is required to notify the NRC of his first employment in NRC-licensed activities following the one-year prohibition period.

Pursuant to 10 CFR 2.202, I find that the significance of Mr. Baab's conduct

described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 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 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Kenneth M. Baab is prohibited from engaging in NRC-licensed activities for one year effective from December 14, 2001. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Kenneth M. Baab is currently involved in NRC-licensed activities, Mr. Baab must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the one-year period of prohibition has expired, Mr. Baab shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Baab shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Baab of good cause.

VI

In accordance with 10 CFR 2.202, Kenneth M. Baab 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. Baab 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: Chief, 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 I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Baab if the answer or hearing request is by a person other than Mr. Baab. 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 Assistant 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 Mr. Baab 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).[1]

If a hearing is requested by Mr. Baab 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), the licensee 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 V above shall be final twenty (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 V 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: Dated this 22nd day of October 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research, and State Programs.

[FR Doc. 02–27698 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

NUCLEAR REGULATORY COMMISSION

[IA 02–019]

In the Matter of Mr. Chitranjan Patel; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Chitranjan Patel (Mr. Patel) is the Chief Operating Officer of Advanced Medical Imaging and Nuclear Services (AMINS). AMINS is the holder of Byproduct Nuclear Material License No. 37–30603–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes AMINS to possess and use any byproduct material listed in 10 CFR 35.100 and 10 CFR 35.200. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

II

On November 30, 2001, the NRC conducted an inspection at AMINS. During the inspection, violations of NRC requirements were identified. The most significant violations involved the receipt, possession, and use of NRC licensed material between March 2001 and November 2001, without an Authorized User (AU) and a Radiation Safety Officer (RSO) at the facility, contrary to 10 CFR 35.11(a) and 10 CFR 35.21. As a result of this finding, the NRC issued a Confirmatory Action Letter (CAL) on December 3, 2001, confirming AMINS commitment, in

part, to: (1) Immediately place all byproduct material in its possession in secured storage; and (2) cease all licensed activities until AMINS retained an AU and RSO, and received approval (via a license amendment from the NRC) for the changes to bring the licensee's program into full compliance with 10 CFR part 35. The NRC subsequently issued an Order Suspending the license on December 14, 2001, as well as a Demand for Information on December 21, 2001, requesting information, in part, as to why the license should not be revoked.

Between December 5, 2001 and March 27, 2002, the NRC Office of Investigations conducted an investigation of activities at the AMINS facility. During the investigation, the NRC determined that: (1) Mr. Patel, the Chief Operating Officer (COO), and another individual (the Vice President (VP)) operated the AMINS facility with the knowledge that the facility did not have an AU and RSO in deliberate violation of NRC regulations; (2) Mr. Patel and the VP knowingly caused false and misleading information to be provided to a radiopharmaceutical company to acquire the radiopharmaceuticals needed for diagnostic testing of AMINS patients; and (3) the records maintained by AMINS were inaccurate, since they named a physician as the AU, when, in fact, the individual was not acting as the AU. The evidence to support these conclusions include:

- In March 2001, AMINS staff began performing licensed activities including ordering and administering radiopharmaceuticals to patients on approximately 590 occasions between June 2001 and November 2001, using the name of an individual as the requesting AU who, in fact, was not the AU and had never been hired by AMINS.
- In October 2001, a consulting physicist conducted an audit that revealed that the duties of the AU/RSO had not been performed, and he briefed Mr. Patel and the VP regarding the problem at the end of the audit, yet NRC licensed activities continued until the NRC inspection on November 30, 2001.
- Mr. Patel, when interviewed by the OI investigator, admitted that he knew the facility was required to have an AU and RSO and knew that it was a problem in June 2001, but Mr. Patel did not take action to cease all licensed activities. In addition, he admitted to the OI investigator that there were financial considerations associated with keeping the facility open.

III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an employee of a license from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. 10 CFR 35.11 requires, in part, that a person shall not use byproduct material for medical use except in accordance with a specific license or under the supervision of an AU as provided in 10 CFR 35.25. 10 CFR 35.21(a) requires that a licensee shall appoint an RSO responsible for implementing the radiation safety program. Further, 10 CFR 30.9 requires, in part, that information required to be maintained by the license shall be complete and accurate in all material respects.

Based on the inspection and investigation, the NRC has concluded that Mr. Patel, as the COO of AMINS, violated 10 CFR 30.10. Specifically, Mr. Patel violated 10 CFR 30.10(a)(1) in that he engaged in deliberate misconduct that caused the Licensee to violate NRC requirements by: (1) Operating the AMINS facility without an AU, contrary to 10 CFR 35.11; (2) operating the AMINS facility without an RSO, contrary to 10 CFR 35.21 (a); and (3) maintaining inaccurate records, contrary to 10 CFR 30.9, in that the records (which were used to order the radioactive material from a radiopharmacy) indicated that the material was being ordered by a physician listed as the AU, when in fact, the individual had never been employed by the licensee. These violations are significant because, by allowing licensed activities to continue even though he knew that AMINS did not have an AU and RSO, Mr. Patel's actions created the potential for unnecessary radiation exposures to workers and members of the public.

IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Patel's deliberate violation of Commission regulations, raises serious questions as to whether he can be relied upon to comply with NRC requirements, including the maintenance of complete and accurate information.

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 would be protected if Chitranjan Patel were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Chitranjan Patel be prohibited from any involvement in NRC-licensed activities for a period of one year. Since licensed activities at AMINS ceased on December 14, 2001, with the NRC issuance of the Order Suspending License, and since Mr. Patel has not been involved in licensed activities since that time, the one-year prohibition period will retroactively begin on December 14, 2001, and end on December 14, 2002. However, if Chitranjan Patel is currently involved in NRC-licensed activities at any NRC licensed facility, Mr. Patel must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Patel is required to notify the NRC of his first employment in NRC-licensed activities following the one-year prohibition period.

Pursuant to 10 CFR 2.202, I find that the significance of Mr. Patel's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 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 30.10, and 10 CFR 150.20, It Is Hereby Ordered, Effective Immediately, That:

1. Chitranjan Patel is prohibited from engaging in NRC-licensed activities for one year effective from December 14, 2001. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Chitranjan Patel is currently involved in NRC-licensed activities, Mr. Patel must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the one-year period of prohibition has expired, Mr. Patel shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Patel shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Patel of good cause.

VI

In accordance with 10 CFR 2.202, Chitranjan Patel 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. Patel 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:* Chief, 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 I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Patel if the answer or hearing request is by a person other than Mr. Patel. 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 Assistant 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 Mr. Patel 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).[1]

If a hearing is requested by Mr. Patel 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), the licensee 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 twenty (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 22nd day of October, 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research, and State Programs.

[FR Doc. 02–27699 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold a meeting to discuss the development of recommendations for a coordinated national ocean policy. This will be the thirteenth public Commission meeting.

DATES: The public meeting will be held Friday, November 22, 2002, from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting location is the Amphitheater, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave, NW., Washington DC 20004.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, section 3(e)(1)(E)). The agenda will include discussions of policy options, presentations by invited speakers, a public comment session, and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Wednesday, November 13, 2002 to the meeting Point of Contact. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's website at *http://www.oceancommission.gov* prior to the meeting.

Dated: October 25, 2002.

Thomas R. Kitsos,

Executive Director, U.S. Commission on Ocean Policy.

[FR Doc. 02–27738 Filed 10–30–02; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25788]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 25, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. (202) 942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any

application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Lepercq-Istel Trust [File No. 811–631]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 9, 2002, applicant transferred its assets to The Tocqueville Trust, based on net asset value. Expenses of $37,735 incurred in connection with the reorganization were paid by Tocqueville Asset Management L.P., investment adviser to the acquiring fund.

Filing Dates: The application was filed on August 20, 2002, and amended on October 9, 2002.

Applicant's Address: 1675 Broadway, New York, NY 10019.

Pioneer Global Financials Fund [File No. 811–10107]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 23, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $19,050 incurred in connection with the liquidation were paid by Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 3, 2002.

Applicant's Address: 60 State St., Boston, MA 02109.

Tax Free Money Portfolio [File No. 811–6074]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On April 27, 2001, applicant distributed its portfolio securities in-kind to the Tax Free Money Fund, applicant's single corresponding feeder fund, thereby dissolving the master-feeder structure. Expenses of $2,000 incurred in connection with the conversion were paid by the Tax Free Money Fund.

Filing Date: The application was filed on October 3, 2002.

Applicant's Address: One South St., Baltimore, MD 21202.

Pioneer Gold Shares [File No. 811–8661]

Pioneer Global Telecoms Fund [File No. 811–10105]

Pioneer Global Health Care Fund [File No. 811–10109]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 29, 1999, August 23, 2002, and August 23, 2002, respectively, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $22,100, $19,050 and $19,050, respectively, incurred in connection with the liquidations were paid by Pioneer Investment Management, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on October 4, 2002.

Applicants' Address: 60 State St., Boston, MA 02109.

Mosaic Focus Fund Trust [File No. 811–7473]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 1, 2002, applicant transferred its assets to The Investors Fund series of Mosaic Equity Trust, based on net asset value. Expenses of $8,000 incurred in connection with the reorganization were paid by Madison Mosaic, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 1, 2002.

Applicant's Address: 550 Science Dr., Madison, WI 53711.

GAM Avalon Multi-Technology, LLC [File No. 811–10243]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 24, 2002, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 20, 2002.

Applicant's Address: c/o Global Asset Management (USA) Inc., 135 East 57th St., New York, NY 10022.

Merrill Lynch Municipal Strategy Fund, Inc. [File No. 811–7203]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 19, 2001, applicant transferred its assets to MuniYield Fund, Inc., based on net asset value. Senior security holders were issued a liquidation preference of $25,000 per share, and the remaining net assets were distributed to the holders of common stock on a pro rata basis. Expenses of $141,755 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on September 25, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Putnam Balanced Retirement Fund [File No. 811–4242]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2002, applicant transferred its assets to The George Putnam Fund of Boston, based on net asset value. Expenses of approximately $432,107 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Putnam Global Equity Fund [File No. 811–7615]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2002, applicant transferred its assets to Putnam Global Growth Fund, based on net asset value. Expenses of approximately $570,523 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Putnam Investment Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Credit Suisse International Small Company Fund, Inc. [File No. 811–8737]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2002, applicant transferred its assets to Credit Suisse International Focus Fund, Inc., based on net asset value. Expenses of approximately $115,024 incurred in

connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse International Equity Fund, Inc. [File No. 811–5765]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2002, applicant transferred its assets to Credit Suisse International Focus Fund, Inc., based on net asset value. Expenses of approximately $278,728 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse Balanced Fund, Inc. [File No. 811–7517]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 12, 2002, applicant transferred its assets to Credit Suisse Large Cap Value Fund, a series of Credit Suisse Capital Funds, based on net asset value. Expenses of approximately $139,749 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse Japan Small Cap Fund, Inc. [File No. 811–8686]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2002, applicant transferred its assets to Credit Suisse Japan Growth Fund, Inc., based on net asset value. Expenses of approximately $322,167 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

NY Tax Free Money Portfolio [File No. 811–6075]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On April 27, 2001, applicant distributed its portfolio securities in-kind to NY Tax Free Money Fund, applicant's single corresponding feeder fund, thereby dissolving the master-feeder structure. Expenses of $2,000 incurred in connection with the conversion were paid by NY Tax Free Money Fund.

Filing Dates: The application was filed on September 3, 2002, and amended on October 3, 2002.

Applicant's Address: One South Street, Baltimore, MD 21202.

Capital Appreciation Portfolio [File No. 811–7408]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On March 28, 2002, applicant distributed its portfolio securities in-kind to Mid Cap Fund, applicant's single corresponding feeder fund, thereby dissolving the master-feeder structure. Expenses of $2,000 incurred in connection with the conversion were paid by Mid Cap Fund.

Filing Dates: The application was filed on September 3, 2002, and amended on October 3, 2002.

Applicant's Address: One South Street, Baltimore, MD 21202.

MuniHoldings Michigan Insured Fund II, Inc. [File No. 811–9483]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 14, 2002, applicant transferred its assets to MuniYield Michigan Insured Fund II, Inc. (formerly MuniYield Michigan Fund, Inc.) based on net asset value. Applicant's shareholders who held auction market preferred stock (''AMPS'') received the equivalent number of newly issued shares of an existing series of AMPS of the acquiring fund. Expenses of $487,030 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Dates: The application was filed on August 7, 2002, and amended on October 4, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Merrill Lynch KECALP L.P. 1991 [File No. 811–6287]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. By July 17, 2002, all assets of applicant had been distributed to the partners of applicant, based on net asset value. Applicant has retained $35,400 in cash to pay the expenses incurred in connection with the liquidation.

Filing Dates: The application was filed on August 16, 2002, and amended on October 10, 2002, and October 22, 2002.

Applicant's Address: 4 World Financial Center, 23rd Floor, New York, NY 10080.

Transamerica Variable Insurance Fund, Inc. [File No. 811–09126]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2002, pursuant to an agreement approved by the Applicant's shareholders, Applicant transferred all of the assets of each of its three portfolios to a corresponding successor portfolio of AEGON/Transamerica Series Fund (the ''Trust''), based on net asset value. Expenses of approximately $105,632 were incurred in connection with the merger and were paid by AEGON/Transamerica Fund Advisers, the investment adviser of the Trust.

Filing Date: The application was filed on August 30, 2002.

Applicant's Address: 1150 South Olive Street, Los Angeles, California 90015–2211.

Endeavor Series Trust [File No. 811–5780]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2002, pursuant to an agreement approved by the Applicant's shareholders, Applicant transferred all of the assets of each of its fourteen portfolios to a corresponding successor portfolio of AEGON/Transamerica Fund (the ''Trust''), based on net asset value. Expenses of approximately $162,593 were incurred in connection with the merger and were paid by AEGON Advisers, the investment adviser of the Trust.

Filing Date: The application was filed on July 17, 2002.

Applicant's Address: 4333 Edgewood Road NE, Cedar Rapids, IA 52499–4520.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27664 Filed 10–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25785; 812–12824]

MLIG Variable Insurance Trust, et al.; Notice of Application

October 24, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: MLIG Variable Insurance Trust (the ''Trust'') and Roszel Advisors, LLC (the ''Adviser'').

FILING DATES: The application was filed on May 15, 2002 and amended on October 23, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 18, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Barry G. Skolnick, Esq., Merrill Lynch Insurance Group, Inc., 7 Roszel Road, Princeton, NJ 08540.

FOR FURTHER INFORMATION CONTACT; Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION; The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust is comprised of twenty-seven separate series (each a ''Portfolio'', and collectively, the ''Portfolios''), each with its own investment objectives and policies.[1] Shares representing interests in each Portfolio are offered solely to separate accounts of Merrill Lynch Life Insurance Company (''MLLIC'') and Merrill Lynch Life Insurance Company of New York (''MLLICNY'') as funding vehicles for certain variable annuity insurance contracts issued by them, and may, in the future, be offered as funding vehicles to separate accounts for variable annuity contracts or variable life insurance contracts issued by MLLIC, MLLICNY or other insurance companies.

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Trust has entered into an investment advisory agreement with the Adviser with respect to each of the Portfolios (the ''Management Agreement''), which was approved by the board of trustees of the Trust (''Board''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), and by each Portfolio's shareholders. Under the terms of the Management Agreement, the Adviser manages the assets of the Portfolios and may hire one or more subadvisers (''Subadvisers'') to exercise day-to-day portfolio management of each of the Portfolios pursuant to separate investment advisory agreements (''Subadvisory Agreements''). All current and future Subadvisers will be registered or exempt from registration under the Advisers Act. The Adviser selects each Subadviser, subject to approval by the respective Board, and compensates each Subadviser out of the fees paid to the Adviser by the Portfolio.

3. The Adviser monitors the performance of each Subadviser and the Portfolio as a whole and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers. The Adviser also is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

4. Applicants request an order to permit the Adviser, subject to the oversight of the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Portfolios (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that each Portfolio's shareholders are relying on the Adviser's experience to select, monitor and replace Subadvisers. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Portfolios, and may preclude the Adviser from

[1] Applicants request that any relief granted pursuant to the application also apply to future Portfolios of the Trust, and any other registered open-end management investment company or series thereof that: (a) is advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser; (b) is managed in a manner consistent with the application; and (c) complies with the terms and conditions of the requested order (''Future Portfolios'', included in the term ''Portfolios''). All entities that currently intend to rely on the requested relief are named as applicants. If the name of any Portfolio should, at any time, contain the name of a Subadviser (as defined below), it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the requested order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the owners of variable annuity and variable life insurance contracts (''Owners'') who have allocated assets to that sub-account), or in the case of a Portfolio whose public shareholders (or Owners through a sub-account of a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before the shares of such Portfolio are offered to the public (or to Owners through a sub-account of a registered separate account).

2. Each Portfolio relying on the requested order will hold itself out to the public as employing the management structure described in the application. In addition, each Portfolio will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish the shareholders of the relevant Portfolio (or, if the Portfolio serves as a funding medium for a sub-account of a registered separate account, the Owners who have allocated assets to that sub-account) all information about the new Subadviser that would be included in a proxy statement. To meet this condition, the Adviser will provide the shareholders (or Owners, if the Portfolio serves as a funding medium for any sub-account of a registered separate account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as well as the requirements of Item 22 of Schedule 14A under that Act.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions of the Owners who have allocated assets to that sub-account).

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When a change of Subadviser is proposed for a Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change of Subadviser is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the Owners who have allocated assets to the sub-account) and that the change does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Portfolio, including overall supervisory responsibility for the general management and investment of each Portfolio's assets, and, subject to review and approval by the Board, will: (a) Set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Portfolio's assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure Subadvisers comply with the related Portfolio's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such director, trustee or officer) any interest in a Subadviser except for ownership of (a) interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27662 Filed 10–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 65617, October 25, 2002]

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, October 30, 2002 at 10 a.m., and Thursday, October 31, 2002 at 10 a.m.

CHANGE IN THE MEETING: Cancellation of Meeting/Additional Meetings.

The Open Meeting scheduled for Thursday, October 31, 2002, has been cancelled, and rescheduled for Wednesday, November 6, 2002, at 10 a.m., in Room 6600. In addition to the Open Meeting scheduled for Wednesday, November 6, 2002, at 10 a.m., the Commission will hold Closed Meetings on Monday, November 4, 2002, at 10 a.m., and on Wednesday, November 6, 2002, immediately following the Open Meeting.

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Monday, November 4, 2002 will be: formal orders of investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

The following item previously scheduled for the Open Meeting on Thursday, October 31, 2002, at 10 a.m. is now scheduled for the Open Meeting on Wednesday, October 30, 2002, at 10 a.m.:

The Commission will consider whether to propose amendments to the definition of terms used in the exception from the definition of dealer for banks under Section 3(a)(5) of the Securities Exchange Act of 1934. The Commission will consider whether to propose amendments to the related exemption for banks, savings associations, and savings banks as well as propose a new exemption concerning securities lending. These proposals relate to the implementation of the specific exceptions for banks from the definitions of ''broker'' and ''dealer'' that were amended by the Gramm-Leach-Bliley Act.

The following item previously scheduled for the Open Meeting on Thursday, October 31, 2002, at 10 a.m., is now scheduled for the Open Meeting on Wednesday, November 6, 2002 at 10 a.m.

The Commission will consider proposed rules establishing standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers, as required by Section 307 of the Sarbanes-Oxley Act of 2002. These standards would include a rule requiring an attorney to report ''evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof'' to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

The subject matter of the Closed Meeting scheduled for Wednesday, November 6, 2002 will be: settlement of injunctive actions; and adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 28, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27774 Filed 10–28–02; 5:01 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46716; File No. SR–CBOE–2002–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Margin Requirements for Broker-Dealer Accounts

October 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to amend its margin rule pertaining to the accounts of broker-dealers in order to establish parity with the requirements for Joint Back Office (''JBO'') participants.[3] The text of the proposed rule change appears below. New text is in italics; deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc. Rules

CHAPTER XII

Margins

No change to Rules 12.1 and 12.2.

Rule 12.3 Margin Requirements

(a) through (f)—(no change).

(g)(i) Broker-Dealer Account. A member organization may carry the proprietary account of another broker-dealer, which is registered with the SEC, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this Rule] *haircut requirements calculated pursuant to Rule 15c3–1 (Net Capital) of the Exchange Act* shall be deducted in computing the Net Capital of the member organization under Rule 15c3–1 of the Exchange Act.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is proposing a change to CBOE Rule 12.3(g)—Margin Requirements (Broker-Dealer Account). When a member organization carries the proprietary account of another broker-dealer, CBOE Rule 12.3(g)(i), in effect, exempts the account from the minimum maintenance margin requirements imposed by CBOE Rule 12.3 and allows the member organization to carry the account on a margin basis that is satisfactory to both parties. However, the rule currently requires that if account equity is below the minimum maintenance margin requirements of CBOE Rule 12.3, the carrying member organization must deduct the amount of the deficiency in computing its net capital under Rule 15c3–1 under the Act.[4] The CBOE proposes to change the amount that must be deducted for net capital purposes under Rule 12.3(g)(i) to the amount, if any, by which the equity maintained in the account is below the haircut requirements prescribed by Rule 15c3–1.

The New York Stock Exchange, Inc. (''NYSE'') has a comparable rule (Rule 431(e)(6)(A)) that was amended in February 2000[5] to eliminate the maintenance margin standard and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A JBO participant purchases an ownership interest in a clearing broker-dealer. Regulation T of the Board of Governors of the Federal Reserve System permits a clearing broker-dealer to finance transactions of its JBO owners on a good faith basis rather than pursuant to the margin otherwise required by Regulation T.

[4] 17 CFR 240.15c3–1.

[5] *See* Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000) (SR–NYSE–97–28).

implement the haircut standard as the equity benchmark. Thus, the CBOE believes that the proposed rule change would make CBOE Rule 12.3(g) consistent with NYSE Rule 431(e)(6)(A).

NYSE Rule 431(e)(6)(A) was changed to gain consistency with NYSE Rule 431(e)(6)(B)—Joint Back Office Arrangements. In 2000, both the CBOE and NYSE instituted similar margin and net capital requirements for member organizations that carry accounts on a JBO basis. In addition, certain requirements were imposed on JBO participants, which included a broker-dealer registration requirement. The CBOE and NYSE JBO rules do not impose exchange maintenance margin requirements on JBO accounts, but instead require that the carrying firm, in computing its net capital, deduct any amount by which equity in the JBO account is below the haircut requirement. At the same time, the NYSE amended NYSE Rule 431(e)(6)(A) on the grounds that, since a JBO participant is a broker-dealer, a broker-dealer account (non-JBO) should receive the same treatment accorded the JBO account for computing a deduction to net capital. Likewise, the CBOE believes that the proposed rule change would make the treatment of broker-dealers under CBOE Rule 12.3(g) consistent with the treatment of JBO participants under the CBOE's JBO rules.[6]

2. Statutory Basis

The proposed rules are intended to harmonize the margin treatment across types of broker-dealer accounts, as well as between CBOE's rule and the analogous NYSE rule. As such, the CBOE believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,[7] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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.

[6] *See* CBOE Rule 13.4(b)(3).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder[9] 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 that the Commission may designate if consistent with the protection of investors and the public interest, provided that the CBOE has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10] 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 the furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2002–59 and should be submitted by November 21, 2002.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(6).

[10] As required under Exchange Act Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27687 Filed 10–30–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46717; File No. SR–DTC–2002–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Enhancements to DTC's Memo Segregation Procedures

October 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 3, 2002, The Depository Trust Company (''DTC'') 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 primarily by DTC. 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 proposed rule change consists of enhancements to the Memo Segregation (''Memo Seg'') procedures of DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change makes enhancements to DTC's existing Memo

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

Seg process. The enhancements are as follows. First, a special reclaim reasons code will be created for free and valued deliver orders that will not affect Memo Seg. Therefore, free and valued reclaims processed with this code will not reduce the deliverer's Memo Seg. Second, a special reclaim reason code will be created for free and valued deliver orders that will reduce Memo Seg. Therefore, free and valued reclaims processed with this code will always reduce the deliverer's Memo Seg. Third, reason codes will be added to the list of exception reason codes for non-optional Memo Seg procedures. Therefore, free deliveries processed with these codes will not automatically reduce Memo Seg. Fourth, additional reason codes will be added to Memo Seg indicators. Fifth, same-day Matched Reclaims will automatically increase the Memo Seg of the receiver of the reclaim if the original delivery decreased Memo Seg regardless of the reclaim reason code. Sixth, pledges will reduce Turnaround position. All enhancements are further described in DTC's Important Notice No. 3733, Memo Segregation Enhancement, which was made available to participants starting September 5, 2002. Important Notice No. 3733 is attached as an exhibit to DTC's proposed rule change.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will give participants additional options in using DTC's Memo Seg procedures. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change will modify DTC's existing Memo Seg procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C)Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC's participants have not been solicited nor received on the proposed rule change.

II. 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)(iii) of the Act [3] and Rule 19b–4(f)(4)[4] promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty 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. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR–DTC–2002–12 and should be submitted by November 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27663 Filed 10–30–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4187]

Office 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(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-four letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) 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 23, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

U.S. Department of State

Washington, DC 20520
September 5, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 proposed permanent export of two (2) Landing Craft Air Cushion (LCAC) vessels, plus spares, warranty items and technical data for use by the Maritime Self Defense Force of 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. DTC 210–02.

U.S. Department of State

Washington, DC 20520
September 5, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of one hundred twelve thousand (112,000) 1DT160 microdetonators for production of detonating fuses to India.

The United States Government is prepared to authorize 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 18–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the employment of Indian nationals at a ground station for remote sensing satellites located in the United Arab Emirates.

The United States Government is prepared to authorize 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 37–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data, defense services, and hardware pertaining to traveling wave tubes, traveling wave tube amplifiers, electronic power conditioners, bus power electronics and electric propulsion products for satellite and satellite earth station applications to India.

The United States Government is prepared to authorize 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 45–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of miscellaneous spare parts for C–130 aircraft to Pakistan.

The United States Government is prepared to authorize 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 70–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for

the requested export consistent with these provisions.

The transaction described in the attached certification involves the re-establishment of Pakistan as an approved sales territory for depot level maintenance facilities for the Phalanx Close-In Weapon System.

The United States Government is prepared to authorize 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 79–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the employment of a Pakistani national, to work with technical data and services related to flight simulators.

The United States Government is prepared to authorize 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 86–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with France that also involves the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense services and defense articles for the production of the VT–1 missile system in France for end-use by the Governments of Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Portugal, Singapore, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey 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. DTC 126–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 four Landing Craft Air Cushions (LCAC) and associated technical data and technical assistance to South Korea for repair information for the LCAC Service Life Extension Program (SLEP) for end-use by the Republic of Korea.

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 127–02.

U.S. Department of State

Washington, DC 20520
September 9, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 with the United Kingdom.

The transaction described in the attached certification involves export to the United Kingdom of technical data and assistance in the manufacture of the Cordless Communication System with an authorized sales territory of: The United Kingdom, Australia, Austria, Bahrain, Brazil, Canada, Chile, Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Jordan, Kuwait, Mexico, Morocco, Mozambique, the Netherlands, New Zealand, Norway, Oman, Philippines, Portugal, Poland, Saudi Arabia, Singapore, Slovakia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Tunisia, Turkey, United Arab Emirates, Uruguay, Venezuela, 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. DTC 145–02.

U.S. Department of State

Washington, DC 20520
September 10, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 $50,000,000 or more.

The transaction described in the attached certification involves the temporary export of one (1) 601 HP Commercial Communications Satellite (Galaxy VIII–IR), spare parts/ground support equipment, and fuel to international waters in the Pacific Ocean for Sea Launch or to Kourou, French Guiana for launch on an Ariane.

The United States Government is prepared to license the re-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 214–02.

U.S. Department of State

Washington, DC 20520
September 13, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of fifty (50) plate mother boards for line of sight computer units for integration into pilot helmet systems to India.

The United States Government is prepared to authorize 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 117–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable Henry J. Hyde,
Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of unclassified technical data related to the marketing of the MK 39 Mod 3A Inertial Navigation System for use aboard surface vessels of the Indian Navy.

The United States Government is prepared to authorize 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 118–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of ten (10) cathode ray tubes for integration into pilot helmet display systems to India.

The United States Government is prepared to authorize 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 119–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of one (1) unit of single-tube night vision goggles with a goggle-mounted military configuration infrared zoom laser illuminator for demonstration to India.

The United States Government is prepared to authorize 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 120–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the transfer of technical data, defense services and hardware necessary to provide a manufacturing company in India the capability to evaluate potential composite replacement materials for metal parts of gas turbine engines for combat aircraft.

The United States Government is prepared to authorize 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 175–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of twenty-three (23) 11Cx4E-synchro controlled transmitters for incorporation into shipboard surveillance sonars to India.

The United States Government is prepared to authorize 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 179–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 defense services, technical data and defense articles to Greece to support the maintenance and upgrade of Greek Armed Forces UH–1 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 205–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 to Algeria of technical data, defense services and defense articles for the installation, training, operation, test, repairs and calibration of the Algerian Maritime Surveillance System and Air Defense Automated Radar Coverage 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 211–02.

U.S. Department of State

Washington, DC 20520
September 13, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

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 with Japan.

The transaction contained in the attached certification involves the export to Japan of technical data and assistance in the manufacture of the Conex Gyro Mod I for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 212–02.

U.S. Department of State

Washington, DC 20520
September 16, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of technical data and defense services to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves an amendment to an existing technical assistance agreement to add Antrix Corporation Ltd., the commercial and marketing arm of the Indian Space Research Organization (ISRO), and to export to Antrix technical data and defense services in support of marketing activities for the sale of commercial communications satellites to the Malaysian firm Binariang Satellite Systems for the MEASAT program.

The United States Government is prepared to authorize these defense services 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 168–02

U.S. Department of State

Washington, DC 20520
September 16, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of multiple sets of main seal bearings, runners and spare carbon sets for the development and manufacture of the Kaveri-IV jet engine to India.

The United States Government is prepared to authorize 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 171–02.

U.S. Department of State

Washington, DC 20520
September 16, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves unclassified technical data in the form of engine integration and installation/performance manuals, performance decks and engine model specification related to the marketing of the T800 family of helicopter engines to India.

The United States Government is prepared to authorize 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 206–02.

U.S. Department of State

Washington, DC 20520
September 24, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of granular activated carbon to Pakistan.

The United States Government is prepared to authorize 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 84–02.

[FR Doc. 02–27714 Filed 10–30–02; 8:45 am]
BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 4182]

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs): Eurasia Professional Exchanges and Training Program for Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (the Bureau) invites applicants to submit proposals that encourage the growth of democratic institutions in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support international projects in the United States and overseas involving current or potential leaders.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting proposals. Once the RFGP deadline has passed, Office of Citizen Exchanges staff may not discuss this competition with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number: All correspondence with the Bureau concerning this RFGP should reference the ''Eurasia Professional Exchanges and Training Program'' and reference number: ECA/PE/C/EUR–03–22. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, Room 220, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Attention: Eurasia Professional Exchanges and Training Program, telephone number 202/205–3003, fax number 202/619–4350, or *KTurner@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application

forms, specific budget instructions, and standard guidelines for proposal preparation.

For specific inquiries, please contact Bureau program officers by phone: Henry Scott (202) 619–5327 (*hscott@pd.state.gov*); Michael George (202) 619–5330 (*mdgeorge@pd.state.gov*); Brent Beemer (202) 401–6887 (*bbeemer@pd.state.gov*). Please specify Henry Scott, Michael George or Brent Beemer on all other inquiries and correspondence.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading the package.

General Program Guidelines

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments should be included in the section on Institutional Capacity. Proposals should contain letters of support tailored to the project being proposed from foreign-country partner organizations.

Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: They should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area and country;
- Experienced staff with language facility and a commitment by the staff to monitor projects locally to ensure implementation;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan that includes activities beyond the conclusion and scope of the Bureau grant.

Proposal narratives should clearly demonstrate an organization's commitment to consult closely with the Public Affairs Section and when required other officers at the U.S. Embassy. Proposal narratives must confirm that all materials developed for the project will acknowledge Bureau funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning, extended and intensive workshops and seminars taking place in the United States or overseas. Examples of program activities include:

1. A U.S.-based program that includes: orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development. Proposals that include U.S.-based training will receive the highest priority.
2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience with committed people within each country, and become active in a practical and valuable way.
3. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

Activities ineligible for support: The Office does not support proposals limited to conferences or seminars (*i.e.*), one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. The Office will only support workshops, seminars and training sessions that are an integral part of a larger project. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the participant selection process. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When American participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States. (See section below on requirements for maintenance of and provision to the Bureau of data on participants and program activities.)

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Evaluation

In general, evaluation should occur throughout the project. The evaluation should incorporate an assessment of the program from a variety of perspectives. Specifically, project assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any unmet needs, and (c) assessing if the project has effectively identified resources, advocates, and financial support for the sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal evaluation must be conducted at the end of each component, should measure the impact of the activities and should obtain participants' feedback on the program content and administration. A detailed evaluation will be conducted at the conclusion of the project and a report will be submitted to the Department of State Bureau of Educational and Cultural Affairs. When possible, the evaluation should be conducted by an independent evaluator.

Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Program Information

Overview

The Bureau welcomes proposals that respond directly to the themes and countries listed below. Given budgetary considerations, projects in countries and for themes other than those listed will not be eligible for consideration and will be ruled technically ineligible. The themes listed below are important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be awarded in all categories.

For this competition, single country projects only are eligible for support. In order to prevent duplication of effort, proposals should reflect an understanding of the work of international agencies so that projects complement—not duplicate—other assistance programs.

Two-way exchanges will be given the highest priority. Applicants should carefully review the following recommendations for proposals in Eurasian countries.

To be eligible for a grant award under this competition, the proposed professional training and exchange projects must address one of the following specific themes for single country projects. Multi-country projects are not eligible for this competition.

Media Training (Armenia or Kazakhstan or Russia or Uzbekistan)
Prevention of Trafficking in Persons (Armenia or Azerbaijan or Belarus or Georgia or Kyrgyz Republic or Tajikistan)
Tolerance (Georgia or Russia)
Intellectual Property Rights (Russia)
Professional Association Building for Political Scientists and Economists (Ukraine)
Tourism and Economic Development (Moldova)
Religion in a Democracy (Kazakhstan)
Business Development (Turkmenistan)
Community and Local Government Relations (Armenia)
Public Health Awareness (Armenia)
Training in NGO Law Making (Turkmenistan)
Library Exchange (Kyrgyz Republic)

Professional Training for Media Professionals

Single Country Projects for Armenia or Kazakhstan or Russia or Uzbekistan

The Bureau is interested in proposals from applicants who possess a thorough understanding of the current state and needs of the media in Armenia, Kazakhstan, Russia or Uzbekistan. Proposals should include in-country and U.S.-based training activities for journalists and/or media outlet managers. When proposing U.S.-based training, the program should include relevant meetings with media experts and a hands-on internship training component at an appropriate media outlet. For internships, letters of support from media outlets willing to host participants should be provided, and the applicant should describe why these media establishments have been chosen. Internships may be developed for individuals or small groups consisting of not more than three persons. If the small group format is used, the internships must have a practical program component with hands-on experience. If participants who do not speak English are nominated for the U.S.-based program, the applicant must explain how the interpreting needs of those participants would be met. In-country activities may include workshops and seminars. These may be led by the participants themselves, or by U.S. trainers, or a combination of both. In addition to group events, training activities should take place throughout the grant period. Applicants should describe in detail these activities and how they will create and sustain long-term relationships between international participants and their home media outlets and their U.S. hosts. Such activities may include virtual mentoring and e-mail consultations between U.S.-based trainers/hosts and participants. Training should not duplicate the work done under recent or existing USG-sponsored programs, but should complement those efforts. Applicants should expect to work closely with the Public Affairs Sections of the U.S. embassies to coordinate all activities, including participant selection.

Preference will be given to projects that do not exceed $150,000.

For Armenia

Media training for Armenia should include a two-way exchange and offer hands-on internships in the U.S. that emphasize a commitment to objective reporting. Applicants should propose to include the Association of Investigative Journalists of Armenia (AIJA) (*http://www.hetq.am/en/index.html*), in program activities.

AIJA is a non-governmental organization whose goal is to provide assistance in the development of investigative journalism and freedom of speech in Armenia. Applicants should explain in detail activities and components that will create and sustain long-term relationships between Armenian participants and their home media outlets and their U.S. hosts.

For Kazakhstan or Uzbekistan

Note: Requirements for proposals for Kazakhstan and Uzbekistan are the same, but applicants must submit single-country proposals only.

Media training projects for Kazakhstan or Uzbekistan should include a two-way exchange and should offer hands-on internships in the U.S. that emphasize methods of income generation, better fiscal management practices, and a commitment to objective reporting. Programs designed for Kazakhstan or Uzbekistan should also emphasize the role of media in reporting on minority and conflict issues. Applicants should explain in detail activities and components that will create and sustain long-term relationships between Kazakh or Uzbek participants and their home media outlets and their U.S. hosts.

For Russia

The program should address one or more of the four issues identified by the Russian-American Media Entrepreneurship Dialogue. (For more information about this, please visit the site <*http://www.whitehouse.gov/news/releases/2002/05/20020524-14.html*>).

Participants on the U.S.-based training program should be outlet owners. Recruitment efforts should be focused on the cities outside of Moscow and St. Petersburg. Programs should complement media training projects that are or were supported by USAID and other USG funders. Applicants should explain in detail activities and components that will create and sustain long-term relationships between participating Russian and American media outlets.

Prevention of Trafficking in Persons

Single Country Projects for Armenia or Azerbaijan or Belarus or Georgia or Kyrgyz Republic or Tajikistan

Human trafficking is a significant problem in many countries in Eurasia. In June 2002 the State Department released its second annual Trafficking in Persons Report to Congress, on the status of severe forms of trafficking in persons worldwide. Through the annual report, the United States seeks to bring international attention to the practice of trafficking in persons worldwide. (Please see *http://www.state.gov/g/tip/rls/tiprpt/2002/*.)

Many governments in Eurasia are currently included in the two lowest tiers of the State Department report. The need to educate and inform communities, lawmakers and media representatives has become imperative to prevent more women and girls from falling victim to trafficking in Eurasia.

The Bureau seeks proposals that provide training and capacity building to individuals and communities in Armenia, Azerbaijan, Belarus, Georgia, the Kyrgyz Republic or Tajikistan to help combat trafficking in persons. Programs should be single county projects and should not duplicate the efforts of other U.S. or European organizations working on the issue. Priority will be given to programs that propose to reach risk groups where anti-trafficking initiatives have been limited or nonexistent. Applicants should expect to work closely with the Public Affairs Sections of the U.S. Embassies in the target countries to coordinate all activities, including participant selection and proposed training modules.

Areas of focus:

1. Training and exchanges of media representatives Armenia or Azerbaijan or Belarus or Georgia or Tajikistan

The Bureau seeks proposals that will provide hands-on training to journalists to ensure widespread, accurate media coverage on the issue of trafficking, to raise media professionals' awareness of the issue, and to train journalists to cover the issue of trafficking without stigmatizing victims. Workshops and on-site consultations at media outlets in the target country are encouraged. U.S.-based training should also be proposed when appropriate. Participants may include media managers, editors and journalists. Successful proposals will include plans for interactive training, as well as the development of action plans, publications, web-based information and/or other results-oriented products that media representatives may access. In-country workshops should include NGO representatives working on trafficking issues.

2. Training and exchanges of parliamentarians and other government officials Armenia or Azerbaijan or Georgia or Kyrgyz Republic or Tajikistan

The Bureau welcomes proposals that will encourage members of parliament and other government officials to take an active stand against trafficking in their countries. Proposals should focus on how government should enforce and/or improve laws against trafficking. Proposals should also address how training will encourage cooperative and complementary efforts to prevent and combat trafficking among government, NGO and media communities. Government officials should be exposed to successful public awareness campaigns in other Eurasian countries and should be encouraged to work with NGOs on adaptable models. Two-way exchanges and follow-up, in-country workshops are strongly encouraged. Participants in U.S.-based programs may include NGO leaders, though the majority of participants should be government officials. NGO leaders and media representatives should be included in all in-country workshops, however. The Bureau is interested in results-oriented proposals that include action plans, publications and other work products that will serve to educate government officials regarding trafficking.

Funding for the above initiatives should not be used to establish job training centers and shelters or to provide victim assistance, but should focus on training and education.

The Bureau anticipates awarding one proposal for each country. Preference will be given to projects that do not exceed $150,000.

Tolerance

Single Country Projects for Georgia or Russia

Note: Requirements for proposals for Georgia and Russia are the same, but applicants must submit a single-country proposal.

The Bureau welcomes proposals that will focus on promoting constructive dialogue and the reduction of stereotyping, violence and hatred among diverse groups. Projects may be designed and implemented through media outlets, educational institutions, NGOs or other partners. Projects should build a valued working relationship between U.S. and overseas professionals and should develop, test, and result in a training program that can continue after grant support concludes. Proposals should focus on redefining inter-communal conflict in specific situations and facilitating dialogue—among teachers, professionals, businesspersons, journalists, community activists—in order to promote better understanding among parties in conflict. Programming should also introduce the evolution of U.S. laws designed to protect minority rights and promote tolerance. Travel in both directions, including a hands-on, U.S.-based program with a train the trainer component, should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

Intellectual Property Rights

Single Country Projects for Russia

Proposals for this project should focus on intellectual property rights (IPR), with a special concentration on copyright protection for films/videos, music recordings, computer software and similar products subject to piracy. Participants should include: (1) Government officials responsible both for drafting and enforcing laws and regulations; (2) lawyers, judges and distributors or licensing organizations involved with presenting and deciding infringement cases; and (3) press and media, to engage them in raising public consciousness about IPR protection. The first phase of the project would bring U.S. project staff to Russia in order to become familiar with the particular legal regime and market environment in Russia and to meet with the principal players in the copyright enforcement arena. The second phase of the project would bring 10–12 copyright lawyers and lawmakers to the U.S. so that they could meet with their colleagues, copyright protection agencies, video and music producers, and other professionals. A third phase should include workshops in Russia that would reach out to a wider audience.

Preference will be given to projects that do not exceed $150,000.

Professional Association Building for Political Scientists and Economists

Single Country Projects for Ukraine

In Ukraine, there are few cohesive efforts to link political scientists—practitioners, educators, and students—into a network that can improve communication and interaction both within Ukraine and with the outside world. The situation is the same in the field of economics.

The Bureau is seeking proposals that will provide for the creation of two professional associations: one for political scientists and one for economists. By cooperating together within the framework of a professional association, political scientists and economists will be better able to coordinate research and analysis activities in Ukraine. Professional associations would also be able to positively impact public policy creation in Ukraine. Further, these professional associations will provide their members with the opportunity to make a positive impact on how these subjects are taught and how research is conducted at Ukrainian institutions of higher learning.

Proposals should provide for the establishment of a professional association for Ukrainian political scientists and a professional association for Ukrainian economists. Activities should provide access to and linkages between similar professional associations in the United States and Europe, and with departments of political science and economics at American institutions of higher learning. Ukrainian participants should be shown how similar American professional associations conduct research and analysis, and how they foster discussion that affect public policy formation in the United States. Applicants should provide for the establishment and maintenance of a website for each association. The websites will facilitate communication among and serve the needs of faculty, students, researchers, and practitioners.

Both in-country and U.S.-based training activities should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $200,000.

Tourism and Economic Development

Single Country Projects for Moldova

The Bureau is seeking proposals that will allow U.S. communities to share tourism and economic development strategies with Moldovan local governments, NGOs and business leaders from small cities. Proposals should provide an opportunity for local government and business leaders from Moldova to examine the experience of U.S. towns and cities, where preservation of cultural heritage and historic sites has been combined with tourism infrastructure development. Strategies that have led to reversing economic decline (*i.e.* aggressive marketing and the incorporation of heritage tourism into local economic development plans) should be examined. Multiple trips in both directions, including a hands-on, U.S.-based internship or study tour, should be proposed. Continuous communication, mentoring, and consultations between Moldovan participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

Religion In a Democracy

Single Country Projects for Kazakhstan

The Bureau welcomes proposals that will build a better understanding of the role religion plays in Kazakhstan and the United States, with emphasis on how Islamic groups and institutions participate in a democratic, secular society in which the separation of church and state and tolerance are the guiding principles. Participants may be religious as well as lay leaders. Activities should illustrate how American religious institutions and individuals (including Islamic) interact with governmental bodies and other public and private institutions, contribute to society at large, and provide spiritual and ethical guidance. Balanced, two-way exchanges will be given priority.

Preference will be given to projects that do not exceed $150,000.

Business Development

Single Country Projects for Turkmenistan

The Bureau welcomes proposals that will foster the development of small and medium-sized businesses in Turkmenistan. Topics to be addressed may cover management, marketing, employee relations, advertising, public relations, business ethics, negotiation skills, customer service, and dealing with a diverse workplace. Programs may include a variety of training opportunities such as U.S.-based internships, hands-on workshops and case studies. Turkmen participants should be linked with U.S. counterparts with similar work responsibilities, in order to ensure ongoing professional interaction.

Preference will be given to projects that do not exceed $150,000.

Community and Local Government Relations

Single Country Projects for Armenia

The Bureau seeks projects that will facilitate collaboration between NGOs and local government bodies. Proposals should include partnerships between U.S. and Armenian NGOs and government officials in order to share experiences on how to improve government responsiveness and effectiveness at the local level. Project activities should focus on how municipal teams, including government officials, educational leaders, NGOs, business leaders, etc. join forces to address major problems (environment, crime, drug use, etc). Proposals should provide practical, hands-on training on how NGOs influence political processes, collaborate with other organizations to achieve common goals, and develop collaborative relationships with government bodies for community action. Programs should consist of a two-way exchange that may include shadowing opportunities, internships, interactive workshops, and case studies. Ideally, participants will be local leaders who will share ideas, successes, and challenges from their communities. Preference will be given to projects that do not exceed $150,000.

Public Health Awareness

Single Country Projects for Armenia

Armenia's difficult transition to a market economy has weakened the government's ability to raise awareness of serious public health issues, such as tuberculosis, HIV/AIDS, alcoholism, and sexually transmitted diseases. The Bureau is seeking projects that are designed to improve public health awareness throughout Armenia. Specifically, the Bureau is interested in training and exchange programs that will improve the capacity of political, community, and other leaders responsible for developing public health policy and disease control and prevention. Proposals should focus on creative, community-based initiatives that will promote greater awareness of health problems. Proposals should

provide practical, hands-on training on how to promote disease prevention strategies, overcome social attitudes that limit public discussion of health issues, and manage grassroots mobilization and advocacy. Programs may consist of a two-way exchange that includes shadowing opportunities, internships, interactive workshops, and exposure to appropriate U.S. public health education models. Formal medical education and the provision of healthcare services or medication are outside the purview of this theme and will not be accepted activities for funding.

Preference will be given to projects that do not exceed $150,000.

Training in NGO Law Making

Single Country Projects for Turkmenistan

The Bureau is seeking proposals that provide Turkmen NGO leaders training in drafting a comprehensive, effective NGO law for their country. Applicants should be familiar with USAID's current work with Turkmen legislators on this topic and should clearly demonstrate expertise in the subject area. Projects should offer opportunities for participants to learn how laws are made in the U.S. and how community engagement can lead to the development of new laws. Training should include a visit to the U.S. by Turkmen participants, as well as follow-up workshops in-country. U.S.-based training should focus on law making at the state level with some focus on the federal level. Training should provide participants hands-on exposure to laws governing NGO taxation, licensing and incorporation and should include a combination of case studies, action planning and site visits. Close consultation with the U.S. Embassy's Public Affairs Section in Ashgabat is critical during all project components.

Preference will be given to projects that do not exceed $150,000.

Library Exchanges

Single Country Projects for the Kyrgyz Republic

Libraries serve as resources for scholarship, proving grounds for new technologies, and gateways for community access to information. In the Kyrgyz Republic, where libraries face severe financial limits, greater collaboration and resource sharing could enhance these institutions' capacity to serve their communities. The Bureau is interested in proposals that will nurture cooperative relationships among Kyrgyz library professionals, government officials, and community leaders and assist participants to manage resources cooperatively and engage their communities in library activities. Proposals should include practical, hands-on in-country training for approximately 100 Kyrgyz participants nationwide given that one of the primary goals of this component should be to initiate a nationwide network of library professionals. Projects should match Kyrgyz library professionals with U.S. colleagues and include appropriate U.S. models for library collaboration and professional development. Continuous activities, including mentoring and consultations between partnered libraries, should be conducted throughout the life of the grant. Proposals for this theme may not exceed $170,000.

Central and Eastern Europe

Requests for grant proposals for the following countries will be announced in separate competitions: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia-Montenegro/Kosovo, Slovak Republic and Slovenia. Proposals involving Central and Eastern Europe WILL NOT be accepted under this competition, and if received, will be technically ineligible.

Western Europe

Proposals involving Western Europe will not be accepted under this competition, and if received, will be technically ineligible.

Budget Guidelines and Cost-Sharing Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international development or exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. Applicants must provide a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. While there is no minimum requirement, applicants are encouraged to provide cost sharing to the fullest extent possible. State Department Review Panels will consider cost sharing seriously when evaluating all proposals.

The following program costs are eligible for funding consideration:

1. *Travel Costs.* International and domestic airfares (per the Fly America Act), transit costs, ground transportation costs, and visas for U.S. participants (J–1 visas for Bureau-supported participants from Eurasia to travel to the U.S. are issued at no charge).

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. For activities in Eurasia, the Bureau strongly encourages applicants to budget realistic costs that reflect the local economy. Domestic per diem rates may be accessed at: *http://www.policyworks.gov/* and foreign per diem rates can be accessed at: *http://www.state.gov/www/perdiems/index.html.*

3. *Interpreters.* Local interpreters with adequate skills and experience may be used for program activities. The Bureau strongly encourages applicants to use local interpreters, if possible. Salary costs for local interpreters must be included in the budget. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters. Typically, one interpreter is provided for every four visitors who require interpreting, with a minimum of two interpreters. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. U.S. Department of State Interpreters may be used for highly technical programs with the approval of the Office of Citizen Exchanges. Proposal budgets should contain a flat $170/day per diem for each U.S. Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter, reimbursements for taxi fares, plus any other transportation expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. *Book and cultural allowance.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written

agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop and translate materials for participants. The Bureau strongly discourages the use of automatic translation software for the preparation of training materials or any information distributed to the group of participants or network of organizations. Costs for high-quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

8. *Equipment.* Proposals may contain costs to purchase equipment for Eurasia-based programming such as computers, fax machines and copy machines. Costs for furniture are not allowed. Equipment costs must be kept to a minimum.

9. *Working meal.* Only one working meal may be provided during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas.

13. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from the Bureau. Proposals should show strong administrative cost-sharing contributions from the applicant, the in-country partner and other sources.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR–03–22.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on January 10, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the RFGP and the Proposal Submission Instructions. Please remember that proposals must be double-spaced. The original and ten (10) unbound copies (secured with a binder clip) of the proposal should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EUR–03–22, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Program Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the target countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of in-country partners should be clearly described.

2. *Institutional Capacity:* The proposal should include (1) the U.S. institution's mission and date of establishment (2) detailed information about the in-country partner institution's capacity and the history of the U.S. and in-country partnership (3) an outline of prior awards—U.S. government and private support received for the target theme/region (4) descriptions of experienced staff members who will implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The proposal should

reflect the institution's expertise in the subject area and knowledge of the conditions in the target country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs for the proposal, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, the in-country partner, and other sources should be included in the budget request.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venues and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau financial support) ensuring that Bureau supported programs are not isolated events.

6. *Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. A draft survey questionnaire plus a description of a methodology to use to link outcomes to original project objectives should be included. Successful applicants will be expected to submit intermediate reports after each project component concludes or on a quarterly basis, whichever is less frequent.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authorities for this program are provided through the Fulbright-Hays Act and the FREEDOM Support Act (FSA).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 24, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–27712 Filed 10–30–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4186]

Bureau of Oceans and International Environmental and Scientific Affairs; Public Meeting to Discuss the United Nations Environment Program (UNEP) Global Mercury Assessment

SUMMARY: The Department of State will host two public meetings on November 7, 2002 for interested parties, one for environmental non-governmental organizations and one for industry representatives. The non-governmental organization and the industry meetings will take place at the Ariel Rios North Building in room 1332 at 1200 Pennsylvania Avenue NW, Washington DC at 10 am and 11:30 am respectively. Attendees must bring picture identification with them to gain entry to the building and should RSVP to Audrey Slayton at 202–564–7426 or *slayton.audrey@epa.gov.*

SUPPLEMENTARY INFORMATION: UNEP Chemicals undertook a process to develop a global assessment of mercury and its compounds. This report, which includes options for addressing mercury's adverse impacts, will be presented to the UNEP Governing Council at its twenty-second session in February 2003.

To complete the global mercury assessment, UNEP established a working group with participants from governments, non-governmental organizations and the private sector. This working group, which met in September 2002, concluded that in their view there was sufficient evidence of significant adverse impacts to human health and the environment from mercury to warrant international action of some type. The working group developed an outline of possible options to address mercury impacts on a local, national, regional, and global level. The UNEP Governing Council is likely to use this report as the basis for a decision on the appropriate role of UNEP in addressing the issue of mercury. The outline of options and other meeting documents can be found at *http://irptc.unep.ch/mercury/WG-meeting1.htm.* For further information, please contact John Thompson, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520, phone 202–647–9799, fax 202–647–5947, *ThompsonJE2@state.gov.*

Timetable and Point of Contact

The public meetings will be held on November 7, 2002 in room 1332 at the U.S. Environmental Protection Agency in the Ariel Rios North Building at 1200 Pennsylvania Avenue. The entrance to the building is at street level directly adjacent to the Federal Triangle Metro escalator. The meetings for non-governmental organizations and industry will be held at 10 am and 11:30 am respectively. The U.S. Department of State is issuing this notice to help ensure interested parties are aware of the UNEP Governing Council discussions on mercury, and have an opportunity to offer comments to the U.S. Government on the issues raised in UNEP's Global Mercury Assessment. Those organizations or individuals which cannot attend the meeting, but wish to either submit a written comment or to remain informed, should provide Margaret Wilson of the U.S.

Department Of State with a statement and their name, organization, address, phone number, and e-mail. Margaret Wilson can be contacted at the U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW., Washington DC 20520, phone 202–647–4833, fax 202–647–5947, *WilsonMA2@state.gov.*

Dated: October 25, 2002.

Jeff Lunstead,

Director, Office of Environmental Policy, Bureau of Oceans, International Environment, & Scientific Affairs, Department Of State.

[FR Doc. 02–27713 Filed 10–30–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular 21–19A, Installation of Used Engines in New Production Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–19A, Installation of Used Engines in New Production Aircraft, for review and comments.

The proposed AC 21–19A provides information and guidance concerning an acceptable means, but not the only means, of demonstration compliance with the requirements Title 14, Code of Federal Regulations part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–19A and be received by December 30, 2002.

ADDRESSES: Copies of the proposed AC 21–19A can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR–210, Production and Airworthiness Division, AIR–200, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Johnnie Smith, Production Certification Branch, AIR–210, Production and Airworthiness Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed revised AC 21–19A provides information and guidance to FAA Production approval applicants or holders allowing the use of used engines in new production aircraft under certain specified criteria. This revision updates the guidance in accordance with current formatting and plain language standards. It also updates all cited references, and provides definitions relevant to the guidance provided. Additional guidance is also provided to the manufacturer who wants to install a used aircraft engine.

Comments Invited

Interested persons are invited to comment on the revised AC 21–19A listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–19A may be examined before and after the comments closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on October 4, 2002.

Frank Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. 02–27730 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revised Notice of Intent to Prepare Draft and Final Environmental Impact Statements for a Replacement Airport at St. George, UT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Revision to October 7, 2002, Federal Register Notice.

Background

In the October 7, 2002, issue of the **Federal Register** Vol. 67, No. 194, at page 62513, the Northwest Mountain Region, Airports Division, Federal Aviation Administration (FAA), announced it intends to prepare Draft and Final Environmental Impact Statements (EIS) for the construction of a replacement airport at St. George, Utah. The following quote was included in that notice: ''the FAA must evaluate the cumulative impact of noise pollution on the Park as a result of construction of the proposed replacement airport in light of air traffic near and over the Park, from whatever airport, air tours near or in the Park, and the acoustical data collected by the NPS in the Park in 1995 and 1998 mentioned in comments on the draft Environmental Assessment (EA)''. The FAA wishes to clarify that the referenced ''Park'' is Zion National Park.

In order to insure that all significant issues related to the proposed action are identified and given consideration, letters containing environmental concerns must be received by Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056 by November 14, 2002.

Point of Contact for Information

Dennis Ossenkop, 1601 Lind Ave., SW., Suite 315, Renton, WA 98055–4056, *Telephone:* (425) 227–2611.

Dated: October 24, 2002.

Lowell H. Johnson,

Manager, Airports Division Northwest Mountain Region.

[FR Doc. 02–27728 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–61]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 20, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400

Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12344 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone (1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Annette Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 24, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12344.

Petitioner: J.R.G. Design, Inc.

Section of 14 CFR Affected: 14 CFR 25.785(h)(2), 25.813(e), and 25.785(j).

Description of Relief Sought: To permit flight attendant seats that do not provide a direct view of the cabin area, installation of interior doors between passenger compartments, and relief from requirements for firm handholds along each aisle and additional passenger areas on a Boeing 747SP–68 airplane.

[FR Doc. 02–27733 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Closed Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory committee special closed session.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), and 5 U.S.C. 552b(c), notice is hereby given of a special closed session of the Commercial Space Transportation Advisory Committee (COMSTAC). The special closed session will be a briefing by a representative from the National Security Council and will take place on Thursday, October 31, 2002, from 12 noon until 1:20 p.m. at the Holiday Inn-Capitol, 500 C Street SW., Washington, DC, in the Apollo Room.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 385–4713; E-mail *Brenda.parker@faa.dot.gov.*

Issued in Washington, DC, October 24, 2002.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 02–27716 Filed 10–28–02; 3:12 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control.

DATES: The meeting will be held on November 19–21, 2002 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Boeing Company, Boeing Field, Bldg. 2–122, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca,org*, (2) Boeing Company, Rich Rawls, *Richard.c.rawls@boeing.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 201 meeting. *NOTE: Name and citizenship information for attendees must be e-mailed to the Boeing POC.* The agenda will include:

- November 19:
- Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA Procedures, Review Agenda, Background)
- Review Terms of Reference per the August 27 RTCA Program Management Committee
- Identify Existing Aeronautical Operational Control messages under consideration
- Review proposed Phase I document outline
- Collect input from airlines on current procedures for verifying weight and balance and takeoff data after it reaches the cockpit
- Draft other sections of Phase I Document
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Note: This agenda will be followed as appropriate over the course of 3 days.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 22, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27732 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–01–C–00–JLN To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Joplin Regional Airport, Joplin, MO

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

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PRF at Joplin Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Stockam, Airport Manager, Joplin Regional Airport, at the following address: 303 E. 3rd Street, Joplin, MO 64802.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Joplin, Joplin Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Joplin Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 11, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Joplin, Missouri, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 17, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $.50.

Proposed change effective date: April, 2003.

Proposed change expiration date: July 2, 2008.

Total estimated PFC revenue: $889,663.

Brief description of proposed project(s): Airport Rescue and Fire Fighting (ARFF) vehicle acquisition; runway and taxiway sign installation; Runway 18/36 extension and parallel taxiway site preparation (Phase 1); Runway 18/36 extension and parallel taxiway site preparation (Phase 2); pave, mark and light Runway 18 extension, partial parallel taxiway and connecting taxiways to Runway 18, install deer fence, purchase a medium-intensity approach light system and runway alignment indicator lights (MALSR); purchase handicap lift; install runway 18 navigational aids; construct Taxiway K; construct apron expansion; construct access road; Runway 13/31 safety area improvements and airport signage/lighting enhancements; new passenger terminal building (Phase 1) design.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Joplin Regional Airport.

Dated: Issued in Kansas City, Missouri, on October 11, 2002.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 02–27729 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00EYW, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter Horton, Airport Manager for the Monroe County Board of County Commissioners, Key West International Airport, 3491 South Roosevelt Boulevard, Key West Florida 33040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monroe County Board of County Commissioners under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822, (407) 812–6331, extension 20. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On (K—insert date of SC Letter), the FAA determined that the application to impose and use the revenue from a PFC submitted by Monroe County Board of County Commissioners was complete was substantially complete within the requirements of section 158.25 part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 2003.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: January 1, 2004.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $263,000.

Brief description of proposed project(s): PFC Application and Administration Costs, Master Plan (Airport Utilities), Soundproof 25 Homes in 65 LDN, Design Noiseproofing of 50 Homes, Security Items (required by Part 139), Runway 9/27 Safety Area and Extension Feasibility Study, Install West General Aviation Apron Lighting, Install Airfield Guidance Signs (11), Drainage for Runway 9/27 and Taxiway A, and Noise Contour Update of Part 150 Map.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31 and Commercial Air Carriers filing DOT Form 298–C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe County Board of County Commissioners.

Issued in Orlando, Florida, on October 22, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02–27731 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Raleigh-Durham International Airport, Raleigh, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Raleigh-Durham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John C. Brantley, III, Airport Director, of the Raleigh-Durham Airport Authority at the following address: 1000 Trade Drive, Post Office Box 80001, Raleigh, NC 27623.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Raleigh-Durham Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invited public comment on the application to impose and use the revenue from a PFC at Raleigh-Durham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 21, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Raleigh-Durham Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 12, 2002.

The following is a brief overview of the application.

PFC Application No.: 03–01–C–00–RDU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2003.

Proposed charge expiration date: September 1, 2008.

Total estimated net PFC revenue: $69,903,473.

Brief description of proposed project(s):

Impose and Use:

◆ Surface Movement Guidance and Control System Plan and Improvements;

◆ Construct Taxiway J (includes International Drive Bridge);

◆ Design Runway 5R–23L Safety Area;

◆ Prepare PFC Application;

◆ Expand Terminal C Apron (includes relocating Taxiway ''D'')

Impose and Use:

◆ Construct Runway 5R–23L Safety Area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled/On-Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Raleigh-Durham Airport Authority.

Issued in College Park, Georgia, on October 21, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–27727 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–13686]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4161; FAX 202–366–7901 or E-MAIL: *joe.strassburg@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0522.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. The Maritime Administration (MARAD) reviews the information and makes a determination regarding agency liability and payments.

Need and Use of the Information: The information obtained will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed and settled, payment is made to the claimant.

Description of Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of officers or crew members.

Annual Responses: 150.

Annual Burden: 1,875 hours.

Comments: Comments should refer to the docket number that appears at the

top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator,

Dated: October 25, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27674 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13019; Notice 2]

Decision that Nonconforming 2003 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2003 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 2003 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified versions of the 2003 Harley Davidson VRSCA motorcycles), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (''MMI'')(Registered Importer 99–192) petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on August 26, 2002 (67 FR 54839) to afford an opportunity for public comment. The reader is referred to that document for a thorough description of the petition.

One comment was received in response to the notice of petition, from Harley-Davidson Motor Company, the manufacturer of the vehicles in question. In this comment, Harley-Davidson stated that it agreed with the petitioner's claims that non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.* Harley-Davidson also expressed agreement with the petitioner's statement that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Harley-Davidson also agreed with the petitioner's description of modifications that would have to be performed on the vehicles to bring them into compliance with Standard Nos. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* and 123 *Motorcycle Controls and Displays.* With respect to the latter standard, Harley-Davidson noted that the installation of a new odometer on the vehicles would trigger the odometer disclosure requirements of 49 CFR part 580. After it was accorded an opportunity to address this comment, MMI informed the agency that after the new odometer is installed, an odometer disclosure label is permanently affixed to the frame of the motorcycle. MMI further observed that the person selling the vehicle would be responsible for completing the odometer disclosure statement required by the regulations in 49 CFR part 580.

Harley-Davidson directed the bulk of its comments to the petitioner's description of modifications that would need to be performed to conform the vehicles to Standard No. 108 *Lamps, Reflective Devices and Associated Equipment.* The petition stated that these modifications would include: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red reflectors that are certified to meet the standard. The petition further stated that although there are no daytime running lights on non-U.S. certified versions of the vehicle, their headlamps and tail lamps are activated when the ignition is turned on.

In its comment, Harley-Davidson stated that the full headlamp assembly (lens, bulbs, and reflector) and the full stop/tail lamp unit (lens, bulb, and reflector) for non-domestic vehicles, other than those intended for sale in Canada, are not compliant with Standard No. 108. Harley-Davidson further observed that the directional signals on non-U.S. certified versions of the vehicle are slightly different than those on its U.S. certified counterpart. Harley-Davidson remarked that although the lenses for all vehicles are

the same, the reflectors and bulbs on non-domestic vehicles, except those intended for sale in Canada, are not. Harley-Davidson also agreed that all rear reflectors on non-domestic vehicles, except those intended for sale in Canada, will have to be replaced with red reflectors that are certified to meet the standard. Harley-Davidson further remarked that the license plate/rear reflector component mounting unit for non-domestic models, except those intended for sale in Canada, do not meet the illumination requirements of the standard. With respect to daytime running lights, Harley-Davidson stated that it does not market vehicles anywhere that are capable of meeting requirements for that equipment, but that the headlamps and tail lamps on its vehicles do burn when then the ignition is on. Harley-Davidson stated that all of its domestic and Canadian-market vehicle have amber positioning lamps incorporating the lower filament of the two-filament front directional signal bulbs.

In its response to these comments, MMI noted that it had already stated in the petition that the a U.S.-model headlamp assembly, which includes a lens, bulb, and reflector, will have to be installed on non-U.S. certified versions of the vehicle to comply with Standard No. 108. MMI further asserted that insofar as the stop/tail lamp, directional signals, and lenses are concerned, replacement of these units with U.S.-model parts will meet the requirements of the standard. MMI further contended that replacement of the non-domestic license plate/rear reflector with U.S.-model components will meet the illumination requirements of the standard.

In consideration of the foregoing, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–394 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2003 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2003 Harley Davidson VRSCA motorcycles originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 28, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27724 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13018; Notice 2]

Decision That Nonconforming 2003 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 2003 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified versions of the 2003 Harley Davidson FX, FL, and XL motorcycles), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (''MMI'') (Registered Importer 99–192) petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on August 26, 2002 (67 FR 54840) to afford an opportunity for public comment. The reader is referred to that document for a thorough description of the petition.

One comment was received in response to the notice of petition, from Harley-Davidson Motor Company, the manufacturer of the vehicles in question. In this comment, Harley-Davidson stated that it agreed with the petitioner's claims that non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.* Harley-Davidson also expressed agreement with the petitioner's statement that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Harley-Davidson also agreed with the petitioner's description of modifications that would have to be performed on the vehicles to bring them into compliance with Standard Nos. 120 *Tire Selection*

and Rims for Vehicles other than Passenger Cars, and 123 *Motorcycle Controls and Displays.* With respect to the latter standard, Harley-Davidson noted that the installation of a new odometer on the vehicles would trigger the odometer disclosure requirements of 49 CFR part 580. After it was accorded an opportunity to address this comment, MMI informed the agency that after the new odometer is installed, an odometer disclosure label is permanently affixed to the frame of the motorcycle. MMI further observed that the person selling the vehicle would be responsible for completing the odometer disclosure statement required by the regulations in 49 CFR part 580.

Harley-Davidson directed the bulk of its comments to the petitioner's description of modifications that would be performed to conform the vehicles to Standard No. 108 *Lamps, Reflective Devices and Associated Equipment.* The petition stated that these modifications would include: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; and (c) replacement of all lenses with lenses that are certified to meet the standard.

In its comment, Harley-Davidson stated that headlamps on vehicles manufactured for sale outside the United States may not incorporate bulbs meeting Standard No. 108. Harley-Davidson also stated that non-U.S. certified stop and directional signals contain lenses, reflectors, and bulbs that do not meet the standard, and would have to be replaced. Harley-Davidson further observed that motorcycles manufactured for sale outside the United States may incorporate amber rear side reflectors that do not meet the requirements of the standard, and be equipped with license plate brackets that do not meet the illumination requirements of the standard. In its response to these comments, MMI stated that U.S.-model headlamp assemblies, stop/tail lamp assemblies, directional signals, lenses, license plate lamps, and rear amber reflectors would be installed on the vehicles to replace any non-conforming components originally installed.

In consideration of the foregoing, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–393 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2003 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2003 Harley Davidson FX, FL, and XL motorcycles originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 28, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27725 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11100, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 2, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Evaluation of Training, Arson for Prosecutors Training Program (Follow-up Survey).

Description: The information collected on the survey will enable ATF to determine the effectiveness of the training program. The Kirkpatrick 4-level model is used to evaluate ATF training programs. The survey is designed to measure at Level 3. This level determines whether the training program has changed the behavior of the participants. Specifically, is what they have learned being applied on the job. This is also called transfer of learning.

Respondents: State, Local, or Tribal Government.

Estimated Number of Respondents: 125.

Estimated Burden Hours Per Respondent: 15 minutes.

Estimated Total Reporting Burden: 63 hours.

OMB Number: New.

Form Number: ATF F 5013.2.

Type of Review: New.

Title: COLAs Online Access Request.

Description: The information on this form will be used by ATF to authenticate end users in the system to electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted to records in multiple databases.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Other (One-time).

Estimated Total Reporting Burden: 300 hours.

OMB Number: 1512–0199.

Form Number: ATF F 5110.30.

Type of Review: Extension.

Title: Drawback on Distilled Spirits Exported.

Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States (US). The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0214.

Form Number: ATF F 5110.74.

Type of Review: Extension.

Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 734.

Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,321 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–27709 Filed 10–30–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountabiliy Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2002.

Last name	First name	Middle name
Delaney	Louanne	Claire
Morrish	William	Fraser
Carvais	Jean	
Kruse	Peter	
Bonifaci	Federica	
Nielsen	Erik	Helmuth
Ramsdell	Roger	Keith
Park	Andrew	Lee
Chow	Chun	Yin
Kwan	Ivy	Kin Han
Boller	Jean	Evelyn
Rask	Joan	Louise
Liguori	Michael	
Dragomer	Peter	Andrew
Purvis	Robert	Kenneth Berry
Minjares	Jesse	Vega
Koch	JoAnn	
Byrne Jr	Harry	Edward
Rasmussen	Steen	Thorsted
Al-Ghanem	Thunayan	Khalid
Silver	Maria	Erecinska
Cannell	Robert	Q.
Valentini	Malvin	J.
Cevallos	Gaston	D.
Moinian	Shahrokh	
Navon	Jonathan	
Jean-Loup	Parier	
Dessaulles	Georges	H.
Wang	Walter	H.
McNair	Elizabeth	Louise
Person	John	Michael
Person	Linda	Jane
Bezold	Karolyn	Jean
Rauchensteiner	Leopold	
Matschulat	Helen	Elizabeth
Thomas	Mark	Russell
Breen	James	William
Breen	Elizabeth	Evelyn
Arseneau	Diana	Elizabeth
Jones	Uwe	Manfred
Tsay	Ting	Kuei
Urrutia	Maria	Del Dulce Nombre
Urrutia Ybarra	Juan	Ramon
Varsavsky	Martin	
Fletcher	Frank	Robert
Avaznia	Tatiana	
Marguardt	Agatha	
Ho	Chung	Hung
Gillery	Scott	Murray
Dixon	Richard	Franklin
Price	Stephen	
Bouffier	Carolina	Yvonne
Al-Granem	Shareefah	Khaled
Bengali	Raahil	Razak
Davis	Mary	Catherine
Mallatratt	Gail	
Carlson	James	Edward
Nielsen	Asta	Elisabeth
Cohen	Paul	Harder
Griffin	Ketty	Lillian
Duchin	David	Sebastain
Armstrong	Jennifer	Diane
Schultz	Kent	Joseph
Jekabsons	Eriks	
Leccese	Arthur	Philip
Caruthers	Lawrence	Constant
De St Sauveur	Michelle	
Howard	Gail	Patricia
Hanrahan	Coleen	Mary
Green	Cornelia	Ward
Staub	Carmen	Sharon
Schuschnig	Daniel	
Tedeschi	Giorgio	
Petersen	Gudrun	Richter
Hijazi	Ali	Nabil
Dvorsky	Bronislaw	Naum
Harries	Boyce	Marquis Allen
Teh	Hau	Fung
Flesher	Sonja	Victoria
James	Myfanwy	Iona
Lewis	Ruth	Hope
De Vlugt	Caroline	Elizabeth
Hung	Jocelyn	Hui Po Wang
Trinchitella	Janel	Denise
Smith	Stephanie	Lynn
Bell Jr	Harry	Robert
Isaac	Reiko	
Leung	Jacqueline	Alee
Kaegi	Joan	Lorraine
McMurrich	James	Ronald
Holmes	John	James Mitchell
Jamison	Britton	Swarte
Hovannisian	Raffi	K.
Werklund	David	Paul
Farquhar	Marcia	Fay
Harris	Pok	Nam
Hamasaka	Kentoku	
Watson	Tong	Pun
Ho	Anthony	Ka King
Miao	Ki	Hong
Shan	Weijian	
Wai	Mirian	Shum
Shimada	Ryosuke	
Tsujigami	Namie	
Kato	David	Hiroyuki
Aldwinckle	David	Christopher
Wada	Takehiko	
Sylvester	Anthony	Brooke
Wells	Kwi	Ye
Likins	Oyo	
Yon	Samuel	Geun-Sung
Yates	Cha	Chun
Jinks	Tae	Sun
Lin	Heng-Yeh	
Gasser	Corinne	Esther
Gudefin	Antoine	Julien
Wettstein-Gasser.	Claudia	
Ritter	Eric	Max
Constant	John	C
Hatchek	Steve	Erick
Paulsen	Kattiya	Thaweephol
Nguyen	Thong	Duc
Johannessen	Ellen	
Robinson III	Frank	Bentley
Von Holtzbrinck	Georg	Andreas
Essary	Roscoe	James
Lehbruner	Maximillian	Josef
Devlin	Amanda	Boon Ee
Gurwicz	Oleg	David
Tuttle	Gene	Lyle (A.K.A. Iriel Even-Pinah)
Price	Stephen	J.
Basrawy	Ruth	J.
Egnal	Marc	Matthew
Bang	Peter	Frithjof
Frith	Healther	Allison
Shurman	Mary	Seamans
Samhoun	Steve	Mustafa
Moore	Donald	Ashton
Zeeb	Thomas	Richard Bernd
Berty	Jean-Benoit	Marie-Gael
Golob	James	Stephen
Karolchyk	Darrell	
Ojjeh	Anne-Marie	Hagerty
Allen (Babb)	Thelma	Jean
Sulzer	Maily	Ellen
Williams	Michael	
Poto	Alfred	Pietro
Ebright	Stephen	Arthur
Jordi	Veronika	
Wingerter	Roseanne	Gloria
Weinberger	Christiane	Eva Elisabeth
Lee	Phillip	Hyon
Schweizer	Scott	Michael
Park	Charles	Chan
Cron	Bonita	Marie
Cron	James	Maxwell
Aagaard	Aase	
Patton	Martha	Ann
Shim	Sang	Ho
Park	Seung	Hyub
Park	Byung	Chun
Lee	Hyun	Jean
Fock	Ee-Ling	
Robins	Peter	Dwight
Cox	Michael	Anthony
George	Frederick	Walter
Ngiratregd	Hayes	
Kessler	Mitchel	Jay
Blackmore	Marian	Wynn
Gerrish	Jacqueline	S.
Botero	Carolina	Barco
Jenkins	John	Andrew

Last name	First name	Middle name
Hayden	Hendrik	Leslie
Koehler	Victor	
Diehl	John	Charles
Karsten	Andreas	Hermann
Shahryar	Ishaq	
Fletcher	Douglas	Elmo
Mansfield Skierka.	Alice	May
Schumacher	Gayle	Elaine
McCarthy	Suzanne	Joyce
Van Der Merwe	Philip	Anton
Quraeshi	Shoaib	
Cowles	Thomas	Michael
Clay	Ravida	
Hale-Byrne	Andrew	James
Astor	Daphne	Warburg
Pratt	Christopher	Stephen
Hubbard	John	Eaton
Lobo-Schweikert.	Maria	Eugenia
Martinez Pelayo	Humberto	Agustin
Boyce Jr	Franklin	Delano
Liu	Yung-Pin	
Yin	Lesamna	Chung-En
Yin	Samuelson	Chung Yao
Ruegemer	Joan	Florence
Fleck	Monica	Annette
Gozolits	Stefan	Norbert
Guthier	Alois	
Martinez	Josef	Ronaldo Hermann
Gowland	Carolyn	Anne
Galindo	Richardo	Alberto
Hutter	Tonya	Marie
Admoni	Nina	Wertans
Mess	Vera	Annette
Wenkstern	Danielle	
Grant	Gordon	David
Clunes	Nigel	
Corser	Patrick	J.B.
Gill	Brendan	
Boote	David	R.D.
Delgado	Paloma	
Reid	Bruce	Hunter
Chen	Fu-Mei	
Lui	Alexander	Yiu Wah
Rechenberg	Dorothea	
Middleton	Mary	Megan
Middleton	Joseph	Leslie
Maher	Mary	Christine
Pillet	Patrick	
Hensler	Guenter	
McKenna	Joanne	
Kessler	Susanne	M.
Grant	David	R.
Hooper	Charles	W. (deceased)

Dated: October 9, 2002.

Samuel Brown,

Team Manager-Examination Operation, Philadelphia Compliance Services.

[FR Doc. 02–27736 Filed 10–30–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled ''Patient Representation Program Records—VA'' (100VA10NS10).

DATES: Comments on the establishment of the new system of records must be received no later than December 2, 2002. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the system will become effective December 2, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov*. All relevant material received before December 2, 2002, will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

The primary function of the Patient Representation Program is to serve as a direct channel of communication and mediation between VA healthcare facility management and individual patients, veterans who have applied for care, their friends, their families, VA healthcare providers and members of the community. A VA healthcare provider is anyone hired by VA and working at a VA facility be it a VA medical center (VAMC), Outpatient Clinic or Community-Based Outpatient Clinic. An employee may be full-time, part-time, or intermittent and includes temporary workers. Members of the community include congressional liaisons, veterans service organizations and attorneys. The program functions as the liaison between the patient and the healthcare system, ensures that patients receive entitled healthcare benefits and services in a dignified and compassionate manner, and ensures that healthcare facility policies and practices are in conformance with the VA Patients' Bill of Rights. The program is the primary source for response when veteran patients' expectations are not met within the VA healthcare system. The Patient Representatives' activities cross all organizational lines of authority at the healthcare facilities for the purpose of expressing patient concerns and resolution of patient complaints. Information collected from the program is integrated into the overall quality improvement plans and activities of the healthcare facility. The purpose of the system of records is to establish a repository for the information that is collected to accomplish the purposes described. Records are maintained at the local VA level on behalf of the veteran making the complaint or compliment so improvements may be made at the VA healthcare facility. Patient contacts are coded in order to facilitate tracking of these contacts to show where improvements might be made. Aggregate data are maintained at the Network and Headquarters levels for the development of reports to make systemwide changes. Records are collected and stored electronically for ease of retrieval by individual patient names and ease in compiling aggregate data.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes to VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. To the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44, United States Code.

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; it is responsible in general for the physical maintenance of the Federal Government's records. VA must be able to turn records over to this agency in order to determine the proper disposition of such records.

3. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States,

and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

4. Disclosure may be made to any facility regarding the hiring, performance, or other personnel-related information with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

Federal, State, or local facilities with which VA healthcare facilities wish to enter sharing agreements or affiliations may require information regarding VA personnel, information on hiring and performance before entering into such relationships.

5. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entities about the healthcare practices of employees who resigned, were terminated or retired and whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

VA must be able to report information regarding the care a healthcare practitioner provides to agencies and boards charged with maintaining the health and safety of patients.

6. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

VA healthcare facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of healthcare facilities and programs.

7. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a healthcare profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named healthcare professional.

8. Disclosure of information to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

The release of information to the FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates. It has also been determined that the release of information for this purpose is a necessary and proper use of the information in this system of records.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA occasionally contracts out certain of it functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill their duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

VA must be able to provide information to agencies conducting background checks on applicants for employment or licensure.

11. Disclosure may be made to a Federal, State, or local agency maintaining civil or criminal violation records, or other pertinent information in order for VA to obtain information relevant to the hiring or retention of an employee, letting of a contract, granting of a security clearance, or the issuance of a grant.

VA needs to obtain information from other agencies in order to conduct background and security clearance checks on applicants for employment to VA, contractors, or persons requesting a grant.

12. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

13. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances: (1) To any non-profit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 U.S.C.; and, (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

14. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency

charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public's health as set forth in State law.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: October 11, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

100VA10NS10

SYSTEM NAME:

Patient Representation Program Records—VA.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs' (VA) healthcare facility (in most cases, back-up computer tape information is stored at off-site locations). Address locations for VA facilities are listed in VA appendix 1. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC, 20420; Veterans Integrated Service Networks (VISNs); and, Austin Automation Center (AAC), Austin, Texas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual patients, veterans who have applied for care, their friends, their families, VA healthcare providers and members of the community. Members of the community include congressional liaisons, veterans service organizations and attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information maintained in paper records, and entered into the Veterans Health Information Systems and Technology Architecture (VistA), related to concerns and complaints regarding an individual's medical care, VA benefits, and/or encounters with healthcare facility personnel. The records include information that is compiled to review, investigate, and resolve these issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, chapter 73, section 7301 (b).

PURPOSE(S):

The records may be used for such purposes as producing various management and patient follow-up reports; responding to patient and other inquiries; conducting healthcare-related studies, statistical analysis, and resource allocation planning; providing clinical and administrative support to patient medical care; audits, reviews and investigations conducted by the staff of the healthcare facility, VISN, VHA Headquarters, and VA's Office of Inspector General (OIG); law enforcement investigations; quality improvement reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations; employee disciplinary or other adverse action, including discharge; advising healthcare professional licensing or monitoring bodies or similar entities or activities of VA and former VA healthcare personnel; accreditation of a facility by an entity such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); and, notifying medical schools of medical students' performance. The information is integrated into the overall quality improvement plans and activities of the facility and used to improve services and communications, as well as, to track categories of complaints and the locations of complaints in order to improve the delivery of healthcare.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of that individual.

2. Disclosure may be made to the National Archives and Record Administration (NARA) for records management inspections conducted under authority of Title 44, United States Code.

3. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

4. Disclosure may be made to any facility regarding the hiring, performance, or other personnel-related information with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

5. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform Federal agencies, licensing boards or the appropriate non-government entities about the healthcare practices of employees who resigned, were terminated, or retired and whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of JCAHO, College of American Pathologists, American Association of Blood Banks, and similar

national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

7. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a healthcare profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named healthcare professional.

8. Disclosure of information to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other relevant information such as current licenses, if necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefit.

12. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

13. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances: (1) To any non-profit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 U.S.C.; and (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public's health or safety, if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

14. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, magnetic tape, disk, or laser optical media. Information on automated storage media includes record information stored in the VistA system. In most cases, copies of back-up computer files are maintained at off-site locations.

RETRIEVABILITY:

Records are retrieved by the names and social security numbers or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to VistA at healthcare facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the VistA system may only be accessed by authorized VA employees and vendor personnel. Access to file information is controlled at two levels: the systems recognize authorized employees by series of individually unique passwords/codes as part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Data maintained at the AAC can only be updated by authorized AAC personnel. Access is limited to authorized employees by individually unique access codes that are changed periodically. Physical access to the AAC is generally restricted to AAC staff, VA Headquarters' employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Program Manager, National VA Patient Representation Program (10NS10), VA Medical Center, 1900 E. Main, Danville, Illinois 61832. Officials maintaining the system: Director at the facility where the individuals made contact.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location where they made or have contact. Inquiries should include the person's full name, social security number, date(s) of contact and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made contact.

RECORD SOURCE CATEGORIES:

The patient, family members, and friends, employers or other third parties when otherwise unobtainable from the patient or family; Patient Medical Records—VA (24VA136); private medical facilities and healthcare professionals; State and local agencies; other Federal agencies; VISNs, Veterans Benefits Administration automated record systems (including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22); and various automated systems providing clinical and managerial support at VA healthcare facilities.

[FR Doc. 02–27686 Filed 10–30–02; 8:45 am]

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Federal Register

Thursday,
October 31, 2002

Part II

Department of the Interior

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Extension of Comment Period; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; extension of comment period.

SUMMARY: This notice announces the provisional agenda for the twelfth regular meeting of the Conference of the Parties (COP12) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The description of each agenda item is followed by a brief explanation of the tentative U.S. negotiating position for that item. Proposals submitted by the United States are only covered in this notice to a limited extent. This notice contains primarily summaries of the tentative U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the CITES Secretariat for COP12. We are also extending the comment period on these issues, which was announced in our **Federal Register** notice of August 20, 2002 (67 FR 53962).

DATES: In developing U.S. negotiating positions on these issues, we will now consider information and comments that you submit if we receive them by October 31, 2002. Our previous comment period was announced (August 20, 2002 (67 FR 53962)) to run through October 4, 2002. This extension is being made in order to give the public every opportunity to provide comments in development of our tentative negotiating positions.

ADDRESSES: *Comments:* You should send comments pertaining to resolutions and agenda items to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or via e-mail at: *cites@fws.gov.* You should send comments pertaining to species proposals to the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, VA 22203, or via e-mail at: *scientificauthority@fws.gov.* Comments and materials that we receive will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: (1) For information pertaining to resolutions, discussion papers, and agenda items for the 12th meeting of the CITES Conference of the Parties: Peter O. Thomas, Ph.D., Chief, U.S. Fish and Wildlife Service, Division of Management Authority, tel. 703–358–2095, fax 703–358–2298, e-mail at: *cites@fws.gov.* (2) For information pertaining to species proposals for the 12th meeting of the CITES Conference of the Parties: Robert R. Gabel, Chief, U.S. Fish and Wildlife Service, Division of Scientific Authority, tel. 703–358–1708, fax 703–358–2276, e-mail at: *scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, referred to below as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in appendices to CITES, copies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our World Wide Website *http://international.fws.gov,* or from the official CITES Secretariat Website at *http://www.cites.org/.* Currently, 158 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties (COP), which review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items for consideration by the Conference of the Parties. Accredited nongovernmental organizations may participate in the meeting as approved observers, and may speak during sessions when recognized, but may not vote or submit proposals. COP12 will be held in Santiago, Chile, November 3–15, 2002.

This is our sixth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of U.S. tentative negotiating positions for COP12. We published our first **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species proposals for the United States to consider submitting for discussion at COP12, and we also presented biological and trade status information on several species that we were already considering. You may obtain information on that **Federal Register** notice, and on species amendment proposals, from the Division of Scientific Authority at the above address. We published our second **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to consider submitting for discussion at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, decisions, and agenda items, from the Division of Management Authority at the above address. We published our third **Federal Register** notice on March 27, 2002 (67 FR 14728), and with it we announced a public meeting to discuss proposed amendments to the CITES appendices (species proposals), resolutions, decisions, and agenda items that the United States was considering submitting for consideration at COP12, and we provided information on how non-governmental organizations based in the United States can attend COP12 as observers. You may obtain information on that **Federal Register** notice from the Division of Management Authority (for information pertaining to proposed resolutions and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the appendices) at the above addresses.

We published our fourth **Federal Register** notice on April 18, 2002 (67 FR 19207), and with it we described the U.S. approach for COP12; described resolutions, decisions, and agenda items that the United States was considering submitting for consideration at COP12; described proposed amendments to the CITES Appendices (species proposals) that the United States was considering submitting for consideration at COP12; invited your comments and information on these potential proposals; and, reminded you of a public meeting to discuss these potential submissions,

which was announced in our **Federal Register** notice of March 27, 2002. You may obtain information on that notice from the Division of Management Authority (for information pertaining to proposed resolutions and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the Appendices) at the above addresses.

We published our fifth **Federal Register** notice on August 20, 2002 (67 FR 53962). With this notice we announced a public meeting on September 10, 2002, which took place as scheduled (*see* **DATES** and **ADDRESSES,** from the August 20 **Federal Register** notice). That public meeting was held in the Sidney Yates Auditorium of the Department of the Interior. The U.S. discussed a variety of logistical and policy issues, heard views of the public on a number of COP12 species proposals and resolutions, and answered a number of questions from the public.

We also posted a notice on our Internet website (*http://international.fws.gov/*) ''Potential Species Proposals, Resolutions, Decisions, and Agenda Items the U.S. is Considering Submitting for Consideration at CITES COP12'' on April 1, 2002. At the time this notice was prepared, we were also planning to post two abbreviated tables on tentative U.S. negotiating positions for resolutions, decisions, other agenda items, and species proposals on our website.

You may locate our regulations governing this public process in 50 CFR 23.31–23.39. Before COP12, we will announce any changes to the tentative negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (*http://international.fws.gov/*). Pursuant to 50 CFR 23.38 (a), the Director has decided to suspend the procedure for publishing a notice of final negotiating positions in the **Federal Register**, because time and resources needed to prepare a **Federal Register** notice would detract from essential preparation for COP12, and because the information on negotiating positions will otherwise be available on the Internet. After COP12, we will announce the amendments to CITES appendices I and II and resolutions and decisions that were adopted by the Parties at the meeting, and request comments on whether the United States should enter reservations on any of the species amendments.

At our public meeting on April 17, 2002, we discussed species proposals, resolutions, discussion papers, and agenda items submitted by the United States to COP12. We discussed species amendments and resolutions submitted by other CITES Parties and the Secretariat, and other agenda items leading up to COP12, at the public meeting on September 10, 2002.

Tentative Negotiating Positions

In this notice we summarize the tentative U.S. negotiating positions on agenda items, resolutions, and proposals to amend the Appendices, that have been submitted by other countries and the CITES Secretariat. (Proposals submitted by the United States are covered in the Internet website posting (*http://international.fws.gov/,* ''Potential Species Proposals, Resolutions, Decisions, and Agenda Items the U.S. is Considering Submitting for Consideration at CITES COP12'') of April 1, 2002 (*see* Background, above). We will not cover most of those issues in this notice. However, for those U.S. submissions not fully explained in the Internet website posting of April 1, 2002, we provide additional information in this notice.

In this notice, numerals next to each agenda item or resolution correspond to the numbers used in the agenda for CITES COP12, and posted on the CITES Secretariat's Internet website (*http://cites.org/eng/cop/12/docs/index.shtml*). However, when we completed this notice, the Secretariat had not yet made available documents for a number of the agenda items and resolutions on the agenda for COP12. Tentative negotiating positions in this notice do not include documents posted to the Secretariat's website after August 1, 2002.

In the discussion that follows below, we have included a brief description of each proposed resolution, agenda item, or species proposal submitted by other countries or the CITES Secretariat, followed by a brief explanation of the tentative U.S. negotiating position for that item. However, new information that may become available at COP12 could lead to modifications of these positions. The U.S. delegation will fully disclose changes in our negotiating positions and the explanations for those changes during public briefings at COP12. The United States is also very concerned about the budgetary implications and workload burden that will be placed upon the Parties, the Committees, and the Secretariat and intends to review all suggested changes in view of these concerns.

Agenda (Provisional) (Doc. 11.3)

Opening Ceremony and Welcoming Addresses

The Secretariat will not prepare a document on these agenda items. According to tradition, as the host country for COP12, Chile will conduct an opening ceremony and make welcoming remarks.

Strategic and administrative matters

1. (a) Rules of Procedure (Doc. 1.1)

Tentative U.S. negotiating position: Support, with exceptions described below.

A draft version of the Rules of Procedure, which describe the manner in which a meeting of the COP is conducted, is distributed prior to all CITES meetings of the COP by the Secretariat. The Secretariat prepared document COP12 Doc. 1.1, which includes a draft of the Rules of Procedure for COP12, and proposes the Conference of the Parties adopt these draft Rules. At the 46th meeting of the Standing Committee (Geneva, March 2002), the Secretariat presented a draft version of the Rules of Procedure for COP12, which included a number of proposed changes to the Rules adopted by the Parties for COP11. The Standing Committee discussed this draft document and concerns were raised, including by the United States, over a number of the changes to the Rules proposed by the Secretariat. The Standing Committee agreed to a number of amendments to the Secretariat's version of the draft Rules of Procedure, and the Secretariat included these amendments in its draft Rules of Procedure in document COP12 Doc. 1.1. In addition to the Standing Committee's amendments, the Secretariat proposed a change to Rule 28.4, on submission of informative documents and exhibitions, to simplify the Rule's text.

Most of the concerns raised by the United States at the 46th meeting of the Standing Committee to the draft Rules of Procedure for COP12 presented there have been addressed and incorporated into the draft version in document COP12 Doc. 1.1. As such, the United States tentatively proposes to support most aspects of the draft version of the Rules of Procedure in document COP12 Doc. 1.1, with the following exceptions: With respect to Rule 17 on the right to speak at meetings of the COP, the United States tentatively does not oppose the proposed changes to this Rule about the order on which the Presiding Officer calls on speakers, as long as every effort is made to allow delegates and observers time to speak or

make interventions; with respect to Rule 20 on submission of draft Resolutions and other documents, the United States tentatively supports in part the changes proposed by Chile in document COP12 Doc. 1.2 (*see* below); with respect to Rules 22 and 23 on proposals for amendment of Appendices I and II, although the United States tentatively agrees with the proposed changes to the text in these Rules, it believes that the term ''scope,'' which appears in both, should be clearly defined; and, with respect to Rule 25 on methods of voting at meetings of the COP, the United States historically has not supported the use of secret ballots, believing that the CITES process at meetings of the COP should be as transparent as possible. As such, the United States is tentatively considering support of the changes to Rule 25 proposed by Chile in document COP12 Doc. 1.2 (*see* below).

(b) Revision of the Rules of Procedure (Doc. 1.2; Chile)

This document was prepared by Chile, and it proposes changes to Rules 20 and 25 of the Rules of Procedure. Tentative U.S. negotiating position: Support, with exceptions described below.

In Rule 20, Chile proposes a change to paragraph 3, regarding circulation to the Parties of urgent draft Resolutions and other documents arising after the 150-day submission deadline. Rule 20.3, as drafted by the Secretariat, states that such documents be circulated ''no later than during the session preceding the session at which they are to be discussed.'' Chile proposes that these kinds of documents should be circulated at least 24 hours preceding the session at which they are to be discussed, as 24 hours is the minimum amount of time necessary to review such documents. Although the United States agrees with Chile that at least 24 hours is necessary to review these documents, it recognizes that it is not always possible for the Secretariat to circulate them 24 hours in advance, particularly in the final days of the COP. The United States recommends that every effort be made to have these documents available 24 hours in advance but does not support changing the rule to make this a requirement.

Chile also proposes several changes to Rule 25, on methods of voting, designed to reduce the use of secret ballots. As discussed above under agenda item 1. (a), the United States historically has not supported the use of secret ballots, believing that the CITES process at meetings of the COP should be as transparent as possible. Therefore, the United States tentatively supports the changes to Rule 25 proposed by Chile in document COP12 Doc. 1.2.

2. Election of Chairman and Vice-Chairman of the Meeting and of Chairman of Committees I and II and of the Budget Committee (no document)

Tentative U.S. negotiating position: Undecided.

The Secretariat will not prepare a document for this agenda item. The United States will support the election of a highly qualified Conference Chair, Vice-Chair, and Committee Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (United States) will serve as temporary Chair of the meeting of the COP until a permanent Conference Chair is elected. According to tradition, the host country, which will be Chile in this case, provides the Conference Chair.

The major technical work of CITES is done in the two simultaneous Committees, thus, Committee Chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference having the required technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES Parties.

3. Adoption of the Agenda (Doc. 3)

Tentative U.S. negotiating position: Support, with additions described below.

This document is prepared for each CITES COP by the Secretariat. The United States has reviewed the Provisional Agenda for COP12 provided by the Secretariat and supports its adoption with the addition of several species proposals submitted by the new CITES Management Authority of Madagascar. At previous meetings of the CITES COP, the United States has supported adoption of the provisional agenda as circulated to the Parties. However, the provisional agenda for COP12 reflects an issue of concern for the United States; specifically, the exclusion of species proposals submitted by Madagascar. It is our understanding that the proposals were not initially accepted by the Secretariat because the Secretariat was unable to verify the lawful status of the new CITES Management Authority of Madagascar at the time the proposals were received by the Secretariat. However, political events in Madagascar since that time have demonstrated that the office submitting the proposals was, at that time, the lawful Management Authority of Madagascar. Therefore, the United States supports the addition of Madagascar's species proposals to the Conference agenda. The species proposals in question covered tortoises, chameleons, frogs, the whale shark, orchids, and several palms.

4. Adoption of the Working Programme (Doc. 4)

Tentative U.S. negotiating position: Undecided.

Prior to the a meeting of the CITES COP, working programmes distributed by the Secretariat are provisional. It is possible that changes may be made to this document prior to the start of COP12, or at the meeting of the Conference of the Parties. The United States generally supports the COP12 Provisional Working Programme posted at the time this notice was prepared. However, The United States remains concerned that the species proposals submitted by Madagascar be considered by the Parties, as discussed above, under Adoption of the Agenda.

Furthermore, pending our review of any forthcoming changes to the Working Programme, we will remain undecided on those potential modifications.

5. Establishment of the Credentials Committee (Doc. 5)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The establishment of the Credentials Committee is a standardized matter. The Credentials Committee approves the credentials of delegates to the meeting of the COP by confirming that they are official representatives of their governments, giving them the right to vote in Committee and Plenary sessions. The Credentials Committee consists of representatives from no more than five CITES Party governments nominated by the Standing Committee. The United States was a member of the Credentials Committee at COPs 10 and 11.

6. Report of the Credentials Committee (Doc. 6)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The United States will support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. The United States will encourage timely production of Credentials Committee reports at COP12.

Adoption of the report of the Credentials Committee is generally a standardized exercise. Representatives

whose credentials are not in order should be given observer status as provided for under Article XI of the Convention. If evidence is provided that credentials are forthcoming but have been delayed, representatives can be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate. Exclusion of clearly legitimate representatives whose credentials are not in order could undermine essential cooperation among Parties. However, vigilance is necessary in cases of close votes, or decisions to be made by secret ballot.

7. Admission of Observers (Doc. 7)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

A document for this agenda item, prepared by the Secretariat, is not normally distributed prior to the start of a CITES COP. The United States supports admission to the meeting of all technically qualified non-governmental organizations, and the United States opposes unreasonable limitations on their full participation as observers at COP12. Non-governmental organizations (NGOs) are admitted as observers if their headquarters are located in a CITES Party country, and if the national government of that Party approves their attendance at the COP. International NGOs are admitted by approval of the CITES Secretariat. After being approved as an observer, an NGO is admitted to the meeting of the COP, unless one-third of the Parties objects.

Non-governmental organizations representing a broad range of viewpoints and perspectives play a vital and important role in CITES activities and have much to offer to the debates and negotiations at a meeting of the COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at meetings of the COP, as is standard CITES practice. The United States also supports flexibility and openness in the process of disseminating documents produced by NGOs to Party delegates. This information sharing is vital to decision-making and scientific and technical understanding at a CITES meeting.

8. Matters Related to the Standing Committee

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The United States is the North American regional representative and the Chair of the Standing Committee. The Forty-seventh Meeting of the Standing Committee will meet on November 1–2, 2002, before COP12 begins, to nominate the chairs of COP committees, provide guidance needed to conduct the meeting of the COP, and follow-up on outstanding committee issues. The Financial Sub-Committee will also meet to finalize the budget for the COP Budget Sub-Committee. The Forty-eighth meeting of the Standing Committee will tentatively meet at the end of the COP.

(a) Report of the Chairman (Doc. 8)

When we completed this notice, we still had not received a document for this agenda item from the Secretariat. The United States, as Chair of the Committee, will prepare this requisite report on the execution of the Committee's responsibilities and its activities between COP11 and COP12 to accurately reflect the discussions and decisions of the Committee.

(b) Election of New Regional and Alternate Regional Members (No Document)

At the time this notice was prepared, a document was not yet available from the Secretariat.

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The Regional Representative for North America from COP11 through COP13 has been, and will be, the United States. Under Resolution Conf.11.1, ''terms of office of the regional members shall commence at the close of the regular meeting at which they are elected and shall expire at the close of the second regular meeting thereafter.''

9. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

Tentative U.S. negotiating position: Undecided.

At each meeting of the COP, the CITES Secretariat submits its financial report and budget for approval. The Parties may modify the budget before approving it. Financial support for the Secretariat comes from a Trust Fund consisting of voluntary annual contributions from Party governments, based on a United Nations scale. Additional support for CITES activities is provided through extra contributions from governments and nongovernmental organizations, and is used for projects approved by the Standing Committee. This ''external funding'' is not part of the Secretariat's budget.

The United States is currently reviewing the Secretariat's budget documents. The United States advocates fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties. The United States plans to be an active participant in the budget discussions at COP12 and at the Finance Sub-Committee meetings of the Standing Committee just before COP12. The United States strongly supports a budget that represents zero-growth in Parties' voluntary contributions.

(a) Budget for 2003–2005 (Doc. 9.1)

The Parties will fully discuss issues associated with the anticipated expenditures of the Secretariat for the triennium 2003–2005 at COP12. The United States will review the documents carefully, bearing in mind the need to balance tasks assigned to the Secretariat with available resources.

(b) Procedure for Approval of Externally Funded Projects (Doc. 9.2)

External funding is financial support provided by Parties and nongovernmental organizations for projects approved as CITES priorities by the Standing Committee. The external funding procedure is designed to avoid conflicts of interest (real or apparent) when approving projects and channeling funds between the provider and the recipient. At SC46, the Parties did agree to a revised procedure to allow more flexibility to the Secretariat in approving external funds. The United States, through the Department of the Interior and the Department of State, contributes external funding to Standing Committee-approved projects including delegate travel to the meetings of the COP, support for Committee meetings, CITES enforcement and implementation training, and biological studies of significantly traded species.

10. Committee Reports and Recommendations

(a) Animals Committee

Tentative U.S. negotiating position: Undecided, until documents are available for review.

(i) Report of the Chairman (Doc. 10.1)

The current Chair (Mr. Marinus Hoogmoed of the Netherlands) will report on the activities of the Animals Committee since COP11. Since April 15, 2001, the Animals Committee has met three times: the sixteenth meeting (AC16) was held on December 11–15, 2000, in Shepherdstown, West Virginia; the seventeenth meeting (AC17) was held on July 30–August 3, 2001, in Hanoi, Vietnam, and the eighteenth

meeting (AC18) was held on April 8–12, 2002, in San Jose, Costa Rica. The Regional Representative from North America on the Animals Committee is Dr. Kurt Johnson of our Division of Scientific Authority, who replaced Dr. Susan Lieberman when she ended her employment with the U.S. Fish and Wildlife Service between COPs 11 and 12. The United States is an active participant in Animals Committee meetings, working groups, and activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding Animals Committee meetings from the Division of Scientific Authority at the address above (*see* **FOR FURTHER INFORMATION CONTACT**).

(ii) Election of New Regional and Alternate Regional Members (No Document)

The six CITES regions are represented on the Animals Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 11.1, which is available on the Secretariat's web page. The representatives are individuals, and not governments. Parties within each CITES region meet during the meeting of the COP to elect new Animals Committee members to represent them. The current North American regional representative on the Animals Committee is Dr. Kurt Johnson, of our Division of Scientific Authority, on behalf of the United States. Dr. Johnson also serves as Chair of the Animals Committee working groups on Significant Trade and Review of the Appendices. The United States, Mexico, and Canada have discussed our representation for the interval between COP12 and COP13, and we will meet to finalize the region's selections for representative and alternate during the first week of COP12.

(b) Plants Committee

Tentative U.S. negotiating position: Undecided, until documents are available for review.

(i) Report of the Chairman (Doc. 10.2)

The current Chair (Dr. Margarita Clemente of Spain) will report on the activities of the Plants Committee since COP11. Since COP11, the Plants Committee has met three times: the tenth meeting of the Plants Committee (PC10) was held in Shepherdstown, West Virginia (December 11–15, 2000); the eleventh meeting (PC11) was held in Langkawi, Malaysia (September 3–7, 2001); and the twelfth meeting (PC12) was held in Leiden, the Netherlands (May 13–17, 2002). The United States sent a delegation to those Plants Committee meetings and has participated actively in Plants Committee activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding the Plants Committee from the Division of Scientific Authority at the address above (*see* **FOR FURTHER INFORMATION CONTACT**).

(ii) Election of New Regional and Alternate Regional Members (No Document)

The six CITES regions are represented on the Plants Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 11.1, which is available on the Secretariat's web page. The representatives are individuals, and not governments. Party countries within each CITES region meet during the meeting of the COP to elect new Plants Committee members to represent them. The current North American regional representative on the Plants Committee is Dr. Bertrand von Arx from Canada. The United States, Mexico, and Canada have discussed our representation for the interval between COPs 12 and 13 and will meet to finalize the region's selections for representative and alternate during the first week of COP12.

(c) Nomenclature Committee Report (Doc. 10.3)

Tentative U.S. negotiating position: Undecided, until documents are available for review

The Nomenclature Committee reviews nomenclature (scientific name) and taxonomic (scientific classification) issues that apply to species listed in the CITES Appendices. The Committee also prepares and adopts checklists for the various taxa (classifications) listed in the CITES Appendices.

The Nomenclature Committee does not have regional representatives and meets only as needed, usually during the meetings of the Plants and Animals Committee. The United States participates in all activities of the Nomenclature Committee. The current Co-chairs are Dr. Marinus Hoogmoed (of the Scientific Authority of the Netherlands) for fauna (animals), and Dr. Noel McGough (of the Scientific Authority of the United Kingdom) for flora (plants). Drs. Hoogmoed and McGough had not submitted their report for consideration at COP12 by the time this notice was completed.

11. Identification Manual (Doc. 11)

Tentative U.S. negotiating position: Support.

This document describes the ongoing production of material for the CITES Identification Manual. This manual contains information necessary to identify specimens of CITES-listed plants and animals in trade, and is often used by Parties' law enforcement agencies. Since COP11, the Secretariat has been responsible for updating the Identification Manual with new material on newly listed species. Proponents of successful listing proposals are supposed to provide identification material within one year of the proposal's adoption.

This document specifies identification material that is currently under production, being translated, or delinquent from Parties. According to this list, the United States must still submit material for identifying eight taxa that we proposed for listing in previous meetings of the Conference of the Parties. We pledge to develop this material as time and resources allow, and we will inform the Secretariat and the other Parties at COP12. The United States completed and submitted identification materials to the CITES Secretariat for several plant species in May 2002. In addition, the United States volunteered to submit a new identification manual on Indo-Pacific corals in trade, which is scheduled for completion in the near future.

12. Revision of the Action Plan of the Convention (Doc. 12)

Tentative U.S. negotiating position: Support, with the exceptions and amendments described below.

The United States has been an active member and sometimes Chair of the Standing Committee working group on the Action Plan. The United States continues to support the execution of the Action Plan and support the recommendations of the working group. The United States would, however, like the Parties to direct the Standing Committee working group to focus on the periodic review and evaluation of the progress of the Action Plan rather than on continuing to revise and update it. The United States believes that the Parties, the Secretariat, and Committees will be unable to develop their own work plans to implement the Strategic and Action plans if these plans continue to be updated and revised. The United States is also concerned that the Action Plan is not being implemented overall and that it holds the Committees and Secretariat to a higher level of responsibility than many of the Parties.

The United States suggests that the Parties direct the Committees and Secretariat to report to COP13 on progress of the implementation of their work plans and provide a schedule for their completion under the Action Plan. The United States, while recognizing that some Parties lack the capacity to take on the task of implementing the Action Plan, would also like the Parties to, at a minimum, include national implementation of the objectives of the Action Plan in their future biennial reports.

13. Establishment of Committees

(a) Revision of Resolution Conf. 11.1 on Establishment of Committees (Doc. 13.1; Chile)

Tentative U.S. negotiating position: Oppose.

Chile proposes to revise the current resolution that sets the level of regional representation in the Animals and Plants Committees so that representation in these committees is the same as the Standing Committee. Currently, regional representation in the Animals and Plants Committees consists of 10 individuals in each committee as follows: one each chosen by North America and Oceania, and two chosen by each of the major geographic regions of Africa, Asia, Europe, and South and Central America and the Caribbean. Regional representation in the Standing Committee consists of 14 individuals as follows: 1 for regions with up to 15 Parties; 2 for regions with 16 to 30 Parties; 3 for regions with 31 to 45 Parties; or 4 for regions with more than 45 Parties.

The United States tentatively plans to oppose this revision of the resolution on establishment of committees. The addition of 8 new representatives (4 in each committee) would have significant financial implications at a time when funds are insufficient to conduct all the priority tasks identified in the Strategic Plan. Also, representatives to the Animals and Plants Committees are chosen by the geographic region for their scientific expertise, not as representatives of governments. Thus, the need for additional individuals with scientific expertise from regions is unclear.

(b) Enhancing Implementation of the Convention (Doc. 13.2; United States)

Tentative U.S. negotiating position: Support.

We think the Parties need to identify an ongoing forum within the Convention to discuss implementation issues. Such a forum needs to include technical experts on implementation within the Parties and be led by the Parties. An in-depth discussion of implementation issues is constrained by the current committee structure and corresponding budget allocations. The United States thinks that it is important to look beyond this structure in exploring ways to address critical implementation problems.

(c) Review of the Committee Structure (Doc. 13.3)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12. As noted for the previous agenda item (13 b), we think the current committee structure fails to address numerous important implementation issues, particularly with regard to certain CITES species listings or types of parts and derivatives in trade.

14. Title of the Convention (Doc. 14)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

15. Outcome of the World Summit on Sustainable Development and the Discussion on International Environmental Governance: Consequences for CITES (Doc. 15)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

16. Cooperation With Other Organizations

(a) Cooperation between CITES and the Commission for Conservation of Antarctic Marine Living Resources (CCAMLR) regarding the trade in toothfish (Doc. 16.1; Chile)

Tentative U.S. negotiating position: Undecided.

CCAMLR is responsible for the conservation and management of Antarctic marine living resources in waters between the Antarctic continent and the Antarctic Convergence, a line of latitudes between 45 and 60 degrees South where the colder, fresher Antarctic waters meet the warmer, saltier waters from the Atlantic, Indian and Pacific Oceans. In response to concerns over illegal, unreported, and unregulated (IUU) fishing for toothfish (*Dissostichus spp.*) in these waters, CCAMLR members have adopted conservation measures, including a Catch Documentation Scheme (CDS) introduced in May 2000 for tracking and monitoring the harvest and trade in toothfish.

Chile indicates that the 30 Member countries and acceding States to CCAMLR represent the main harvesting, processing, and consuming countries for toothfish, and that CCAMLR has made progress in controlling IUU fishing. In fact, only about half of this number of Members and acceding States are engaged in toothfish harvest and trade. Chile also states that there is no doubt that cooperation on the part of countries that are not parties to CCAMLR, but are parties to CITES, would be helpful in supporting CCAMLR's conservation measures.

The resolution calls for all CITES Parties that fish for or trade in toothfish to, (a) comply with CCAMLR conservation measures regarding toothfish (including adopting use of the CCAMLR *Dissostichus* Catch Document (DCD) for toothfish that are imported, exported, or in transit through their territories) if they are not already doing so, (b) be vigilant in examining toothfish in trade, particularly its geographic origin, (c) cooperate with the CCAMLR Secretariat in the collection of trade data, and (d) take measures to ensure that their flag vessels are not used to undermine CCAMLR conservation measures or those adopted by States in whose territorial waters *Dissostichus* is found. The resolution urges CCAMLR to keep CITES Parties informed, directs the CITES Secretariat to provide CCAMLR with any available information on illicit trade, and invites all interested States, the United Nations Food and Agriculture Organization (FAO) and others to cooperate in efforts to prevent illicit trade.

Australia has submitted a proposal for including Patagonian and Antarctic toothfish in CITES appendix II (Prop. 39) and provided a discussion paper on how CCAMLR and CITES permitting regimes may work together to monitor trade. (*See* number 66 of this notice). Chile is urging CITES Parties to voluntarily adhere to CCAMLR conservation measures as an alternative approach to an appendix-II listing. As with all papers concerning trade in *Dissostichus spp.,* in order to determine

a position on Chile's proposed resolution, U.S. government agencies will evaluate the many complex aspects of the trade and how CITES might be useful as an adjunct to traditional fisheries management. This includes how our position would affect or be affected by the proposed cooperation with FAO (*see* Doc. 16.2.2, discussed below) regarding international trade in marine fish species. At this time, the United States is undecided as to our positions on issues related to the role of CITES in international toothfish trade.

(b) CITES and FAO

(i) Synergy and Cooperation Between CITES and FAO (Doc. 16.2.1; Japan)

Tentative U.S. negotiating position: Oppose.

Japan has submitted a draft resolution calling on the CITES Secretariat to work with the FAO Secretariat toward developing a Memorandum of Understanding (MOU) that would establish a framework for cooperation between CITES and FAO. Japan states that the MOU would enhance cooperation and exchange of information and establish a process to ensure FAO involvement in the scientific evaluation of proposals for listing and down-listing of commercially exploited aquatic species.

A set of recommendations for strengthening cooperation between CITES and FAO with respect to commercially exploited fish species was agreed to in Bremen, Germany at the 8th session of the FAO Committee on Fisheries Subcommittee on Fish Trade held during February 2002. The United States was pleased to work closely with Japan and others at the meetings in Bremen and has also submitted a document endorsing an MOU between FAO and CITES (*see* Doc. 16.2.2).

We agree that FAO and the mandated regional fisheries management organizations (RFMOs) are appropriate inter-governmental bodies responsible for fisheries management (under Article XV, 2b). The United States, however, believes that regulation of international trade under CITES can serve as a useful adjunct to traditional fisheries management for species that might be listed in the CITES Appendices. The United States supports the expert process outlined in the Bremen recommendations but does not believe that action in FAO does not require a parallel response in CITES. The Bremen recommendations call for both CITES and FAO to make the political commitment necessary to ensure improved cooperation on commercial fish species; for CITES, this means through action at the COP.

(ii) FAO Collaboration With CITES Through a Memorandum of Understanding (Doc. 16.2.2; United States)

Tentative negotiating position: Support.

The Eighth Session of the FAO (Food and Agriculture Organization of the United Nations) Committee on Fisheries, Sub-Committee on Fish Trade, held in February 2002 (Bremen, Germany), sent forward a recommendation supporting the implementation of a Memorandum of Understanding (MOU) between FAO and CITES. The United States has submitted this document requesting that the CITES Parties review this recommendation and suggesting that the Standing committee determine a course of action and time-frame for initiating and finalizing such an MOU. The MOU would cover all CITES-specific issues under review by FAO, and could be established between the CITES Standing Committee and the comparable FAO committee. The United States recognizes the contributions FAO has made in evaluating the CITES listing criteria for marine fish and supports a formal MOU between CITES and FAO to facilitate exchange of information and technical advice regarding commercially exploited fish species.

(c) Cooperation and Synergy With the Inter-American Convention for the Protection and Conservation of Sea Turtles (Doc. 16.3; Ecuador)

Tentative U.S. negotiating position: Support.

This draft resolution directs the CITES Secretariat to investigate opportunities for cooperation and coordination between CITES and the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) (including Parties to the IAC and its Secretariat).

As a Party to the IAC, which entered into force May 2, 2001, the United States supports this draft resolution. We also note that a draft resolution developed at the second CITES wider Caribbean range States hawksbill turtle dialogue meeting (May 21–23, 2002, Cayman Islands, United Kingdom), with the support of the United States, urges the participation of relevant regional and international multilateral environmental agreements, such as UNEP–CEP, the IAC and other relevant bodies, to promote joint collaboration to recover hawksbill sea turtles throughout the Wider Caribbean. CITES, IAC, and UNEP–CEP all have important roles in the conservation of sea turtles in the region. Therefore, we intend to support this draft resolution and to recognize these organizations' roles in the conservation of marine turtles.

(d) CITES and the International Whaling Commission

(i) Cooperation Between CITES and the International Whaling Commission (Doc. 16.4.1; Mexico)

Tentative U.S. negotiating position: Support.

If adopted, this resolution would reaffirm the complementary relationship between CITES and the IWC as a crucial element for the conservation of whale stocks. The resolution encourages the IWC to inform CITES of its decisions regarding whale stocks. It proposes retaining whale species listed in the CITES appendices in which they are currently listed because it is premature to downlist these species while work is continuing to develop a Revised Management Scheme. Maintaining this listing would strengthen the ability of IWC to enforce its current moratorium on commercial whaling, as communicated to CITES by IWC in 1978, through listing in CITES appendix I.

(ii) Matters Relating to the International Whaling Commission (Doc. 16.4.2; United States)

The United States notified the CITES Secretariat that we will not be submitting this document at this time. However, the United States does plan to submit an information document at COP12 detailing the status of efforts by the International Whaling Commission (IWC) to adopt a Revised Management Scheme (RMS) to manage commercial whaling, should it resume. This information paper will also include a summary of actions taken at the October 14–17, 2002, meeting of the IWC (Cambridge, United Kingdom), which is intended to make further progress on the Revised Management Scheme. The United States believes that no great whale species should be considered for downlisting from appendix I until the IWC adopts an effective Revised Management Scheme.

(e) Statements From Representatives of Other Conventions and Agreements (No Document)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The Secretariat will not produce a document for this issue. The United States supports ongoing dialogue between CITES and other relevant and related conventions and agreements and

believes statements from them could be valuable at meetings of the COP.

17. Sustainable Use and Trade in CITES Species (Doc. 17; Norway)

Tentative negotiating position: Oppose, with some exceptions.

Norway addresses concerns it has regarding sustainable use and the amendment of the CITES appendices. Norway thinks there are difficulties with delisting or downlisting a CITES species even when warranted by the CITES criteria, and warns against the use of trade restrictions as ''protectionistic measures under cover of scientific uncertainty.'' Norway proposes: (a) the development of CITES guidelines for the interpretation of the principle of sustainable use, in cooperation with the Convention on Biological Diversity (CBD) and the Food and Agriculture Organization (FAO); (b) the preparation of a proposal by COP13 to revise the listing criteria so as to include the principle of sustainable use; and (c) the development of a 5-year review process or a ''sunset clause'' to ensure that the CITES appendices reflect accurately the conservation status of a species.

Although the United States fully supports the sustainable use of wildlife as a means for the economic development of local communities as well as an incentive for the conservation of species and ecosystems, we do not believe there is a need to develop a CITES definition of sustainable use. From its inception, CITES has been an effective tool for the promotion of sustainable use of appendix-II species through the issuance of non-detriment findings as required under Article IV, paragraph 2(a), of the Convention. There would be difficulties in the practical application of many elements in the Norwegian proposal. We believe the development of CITES guidelines for the interpretation of the principle of sustainable use would be potentially problematic. Guidelines would likely vary considerably depending on the species, ecosystems, and/or socio-economic or political systems involved.

Failure to adopt a proposal for the delisting of an appendix-II species or the transfer of a species from appendix I to II does not mean that there are widespread difficulties related to the delisting and downlisting processes. It simply means that the majority of Parties have not been persuaded to adopt a given proposal. Furthermore, we disagree with the assertion that listing of species in the CITES Appendices is used to conceal scientific uncertainty. To the contrary, the United States believes that it is important to acknowledge the importance of the precautionary approach to wildlife management and that failure to do so would constitute a greater risk than if no trade restrictions were in place for wild populations for which there is uncertainty. In fact, the United States and Norway both subscribe to the precautionary approach in the case of fisheries management. As Parties to the 1995 United Nations Fish Stocks Agreement, both have agreed to be ''more cautious when information is uncertain, unreliable or inadequate,'' and further that ''the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures'' (UNFSA Article 6, paragraph 2).

Through Decision 11.2, the Parties established a specific protocol for examining the current listing criteria contained in Resolution Conf. 9.24. Since COP11, a Criteria Working Group has been reviewing the listing criteria. A report of the working group will be presented at COP12 (*see* Doc. 58, below). Comments on the criteria included in Norway's resolution should have taken place through this process. If not, Norway still has an opportunity to present their comments during discussion of the listing criteria at COP12.

Finally, there is already a process in place for periodic review of the appendices. The Plants and Animals Committees review listings that may no longer be appropriate, utilizing the listing criteria in Resolution Conf. 9.24. Within the Animals Committee, the species reviews are conducted on a voluntary basis by Parties. As a result, relatively few reviews have been completed thus far. The Animals Committee is currently developing guidelines for improving the periodic review process. Without an adequate budget that is specifically allocated for conducting species reviews, it is unlikely that all listed species can be reviewed properly every 5 years as recommended by Norway. In addition, establishment of a sunset clause is troublesome given that it could result in the delisting of species that continue to require the trade controls afforded by CITES.

Although the United States does not plan to support this resolution on sustainable use and trade in CITES species as currently drafted, we would consider support for a dialogue on the concept of sustainable use within CITES that could further clarify its meaning, particularly in high-volume or high-value species. Furthermore, the United States supports closer collaboration between CITES and FAO, CBD, or other appropriate inter-governmental organizations in areas where work can be complementary (see item 16b, above).

18. Economic Instruments and Trade Policy (Doc. 18)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

19. Financing of the Conservation of Species of Wild Fauna and Flora (Doc. 19)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12. In response to Decision 11.78, the Secretariat distributed Notification to the Parties No. 2001/016, in which it requested information on national funding mechanisms for the conservation of wild fauna and flora. The United States provided information on four such mechanisms, but noted in its response that it would be unable to provide information on all relevant U.S. funding mechanisms due to the enormity of the task. The United States supports efforts to provide information on the broad array of mechanisms available to support wildlife conservation.

20. Reports of Dialogue Meetings

(a) Results of the African Elephants Dialogue Meeting (Doc. 20.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat as the African elephants dialogue meeting is scheduled to be held in Santiago, Chile, immediately prior to the start of COP12. Once we receive a document on this agenda item, presumably at COP12, we will review it closely and develop a tentative negotiating position for COP12.

(b) Results of the Wider Caribbean Hawksbill Turtle Dialogue Meeting (Doc. 20.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

We expect that this will provide an update on the two CITES wider Caribbean range states hawksbill turtle dialogue meetings held since the eleventh meeting of the CITES Conference of the Parties (COP11). At COP11, Cuba submitted two proposals to transfer the hawksbill turtle (*Eretmochelys imbricata*) population inhabiting Cuban waters from appendix I to appendix II (Proposals 40 and 41), but they were rejected, partly because there was no regional consensus among hawksbill range countries in the Caribbean. After COP11, the Secretariat convened two technical workshops of Caribbean hawksbill turtle range states and territories to discuss and, if possible, reach consensus on the many difficult issues raised at COP11 regarding the conservation and management of hawksbill sea turtles. The first CITES wider Caribbean range states hawksbill turtle dialogue meeting was held in Mexico May 15–17, 2001. This was followed by a second hawksbill turtle dialogue meeting held May 21–23, 2002, in the Cayman Islands, United Kingdom. The United States provided financial support for and participated actively in both hawksbill turtle dialogue meetings. At the second hawksbill turtle dialogue meeting, working groups drafted a communique and a draft resolution for submission at COP12, with the participation and full support of the United States. Among other things, the draft resolution urges Caribbean states and territories to develop a regional conservation strategy for hawksbill turtles. It also urges Parties to adopt and implement standard protocols for the monitoring of hawksbill turtles developed at the second hawksbill dialogue meeting. The United States will work for adoption of the draft resolution.

Interpretation and Implementation of the Convention

Review of Resolution and Decisions

21. Review of Resolutions and Decisions

(a) Review of Resolutions

(i) Resolutions To Be Repealed (Doc. 21.1.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

Decision 11.136, adopted at COP11, directed the Secretariat to analyze information it receives from the Parties regarding problems in the implementation of existing Resolutions and prepare a document for the Standing Committee. Based on its own analysis of the implementation of existing Resolutions and on information it received from several CITES Party countries (including the United States), the Secretariat prepared and presented document SC46 Doc. 10 at the 46th meeting of the Standing Committee (Geneva, March 2002). This document provided a list of those Resolutions for which the Secretariat was planning to prepare proposals for COP12 to either repeal or revise. The Standing Committee requested that the Secretariat notify all Parties of the Resolutions for which it intends to prepare amendment proposals for COP12, and to provide a brief explanation of the reasons for the proposed amendments.

At the time this notice was prepared, the Secretariat had not yet notified the United States of the Resolutions for which it intends to prepare proposals for COP12.

(ii) Resolutions To Be Revised (Doc. 21.1.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

This issue, ''Resolutions to be revised,'' is part of the same analysis by the Secretariat that is described above for agenda item 21. (a) (i), entitled ''Resolutions to be repealed.'' As with that agenda item, at the time this notice was prepared, the Secretariat had not yet notified the United States of the Resolutions for which it intends to prepare proposals for COP12.

(b) Review of Decisions (Doc. 21.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

In addition to providing a list of those Resolutions for which the Secretariat was planning to prepare proposals for COP12 to either repeal or revise, document SC46 Doc. 10, presented by the Secretariat at the 46th meeting of the Standing Committee (Geneva, March 2002), included a statement that the Secretariat was planning to prepare proposals to put into Resolutions the texts of existing Decisions that are not time-limited.

In principle, the United States supports the concept of moving the text of Decisions that are not time-limited into Resolutions. Decisions are supposed to provide immediate instructions that are more short-term in nature than the guidance found in Resolutions. They are usually intended to be carried out between two meetings of the COP.

Regular and Special Reporting Requirements

22. Report on national reports required under Article VIII, paragraph 7, of the Convention

(a) Annual reports (Doc. 22.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

The United States supports efforts to encourage all Parties to submit annual reports, for all species of fauna and flora, consistent with their domestic legislation. Each Party is required by CITES to submit an annual report containing a summary of the permits it has granted and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate annual report data are essential to measure the impact of international trade on CITES-listed species, and can also be an effective enforcement tool, particularly when imports into a given country are compared to export quotas from other countries. The United States has submitted all of its CITES annual reports through 2000, and intends to meet its obligation to submit its 2001 annual report by the October 31, 2002, submission deadline.

(b) Biennial reports (Doc. 22.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it

closely and develop a tentative negotiating position for COP12.

The United States supports efforts to encourage all Parties to submit biennial reports on legislative, regulatory, and administrative measures taken to enforce the provisions of CITES. Each Party is required by CITES to submit such biennial reports. Due to staffing shortages for the past several years, and work priorities involving timely preparation of the U.S. annual reports, we have been unable to prepare and submit U.S. biennial reports since 1987–1988. However, the United States intends to meet its obligation to submit its 2000–2001 biennial report before the opening of COP12 in November 2002.

23. Appendix-I Species Subject to Export Quotas

(a) Leopard

(i) Report on implementation of Resolution Conf. 10.14 on quotas for leopard hunting trophies and skins for personal use (Doc. 23.1.1)

Tentative U.S. negotiating position: Oppose, with exceptions described below.

This document, with a proposed amendment to an existing resolution (Resolution Conf. 10.14), was marked ''provisional'' by the CITES Secretariat when this notice was prepared. If we receive a new version of this document in the future, we will review it closely to determine whether our tentative negotiating position for COP12, outlined here, needs to be changed.

Resolution Conf. 10.14 establishes annual export quotas for leopard hunting trophies and skins and requires that Parties with such a quota submit a special annual report, in addition to the annual report required by Article VIII, paragraph 7, of the Convention, that identifies particular information about the exports. Conf. 10.14 also established the tagging requirements for leopard trophies. The Secretariat submitted a proposed amendment to Conf. 10.14 that, at a minimum, would remove the special annual reporting requirements called for under the Resolution and would allow the Parties with leopard quotas to submit the required information solely in their CITES annual report. However, the Secretariat's proposed amendment also recommends that Conf. 10.14 be repealed, in its entirety, on the basis that none of the Parties with leopard quotas have exceeded them in the past, that sustainable quotas can be established under existing national voluntary quotas, and that tagging leopard skins and trophies does not provide any benefit in controlling illegal trade.

The United States agrees that requiring a special annual report would not be necessary, provided that the Parties include the same information regarding the annual leopard exports that is called for in Conf. 10.14 in the CITES annual report and the Parties have a consistent record of submitting their annual reports. However, a large number of the leopard trading countries have failed to submit their annual reports either in a timely manner or at all. Because this species is included in appendix I, the United States does not agree with the Secretariat that Conf. 10.14 should be repealed. The Parties have identified leopard as a species of particular concern by placing it in appendix I. As such, it is important for the Parties to be actively involved in the establishment of quotas. It is also important to maintain the tagging program to assist in the control of illegal trade and to properly identify legitimate trophy specimens that enter international trade.

(ii) Amendment to the quota of the United Republic of Tanzania (Doc. 23.1.2)

Tentative U.S. negotiating position: Undecided.

This document proposes to amend the leopard export quota established in Conf. 10.14. Currently, the annual quota for Tanzania is 250 leopards. This document requests that the quota be raised to 500 leopards annually. The United States, as reflected in the document we submitted for COP12 on establishing scientifically based quotas, is very interested in ensuring that annual export quotas are established on strong biological data. Tanzania's request does not go into sufficient detail about the leopard review to determine at this time whether the proposed increase is based on sound science that would ensure sustainable harvesting of leopards or is market-driven to increase the level of tourism within Tanzania. Therefore, we have not been able to develop a tentative negotiating position for COP12 at this time.

(b) Markhor (Doc. 23.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

The document submitted for this agenda item at the previous COP (COP11) covered the use of annual export quotas for *Capra falconeri* (markhor) granted to Pakistan at COP10 under the provisions of Resolution Conf. 10.15. In that document the Secretariat made four comments/recommendations: (1) That the deadline to May 31st be accepted; (2) that Resolution Conf. 10.15 makes no reference to management of revenues and that this matter should be addressed at the national level; (3) the Secretariat commends Pakistan for reporting its first successful hunts since a markhor quota was approved and the implementation of its community-based conservation program for markhor; and (4) the Secretariat notes that no information was provided on the status of markhor in the 1998 annual report; the Secretariat suggests that Pakistan should provide information to the COP on a sustainable monitoring program at an appropriate frequency that would cover all important subpopulations of markhor.

At COP11, Resolution Conf. 10.15 was amended to include most of these recommendations. At COP11, the United States was concerned about the poor reporting and lack of adequate population survey data presented by Pakistan. We remain concerned about these issues, and await the document for COP12 to see how they have been addressed. We have heard from reliable sources that Pakistan might request an increase in their quota to 20 animals. We do not support such an increase. In fact, if the forthcoming document demonstrates that Pakistan has continued a poor record of reporting, or has not conducted adequate surveys, the United States will consider recommending a quota reduction or suspension.

24. Exports of Vicuna Wool and Cloth (Doc. 24)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

25. Transport of Live Animals (Doc. 25)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, we were still reviewing the document posted by the Secretariat. We will continue to do so as we develop a tentative negotiating position for COP12.

The United States has been supportive and actively involved in the Transport Working Group (TWG) of the Animals Committee since its inception. We expect to continue that level of support after COP12, and we support the COP re-authorizing the TWG through COP13. At the 18th meeting of the Animals Committee (San Jose, Costa Rica, April 2002), the Chair of the TWG reported on the group's continuing efforts to recommend revisions to the Live Animals Regulations of the International Air Transport Association (IATA) and to evaluate mortality levels in traded CITES-listed wildlife. The United States supported the TWG's efforts in this area, and we expect to continue our general support of the group's activities.

General Compliance Issues

26. Compliance With the Convention (Doc. 26)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

27. Enforcement Matters (Doc. 27)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, we were still reviewing the document posted by the Secretariat, which was marked Provisional at that time. The document was later posted in a final form, and we will continue to review it as we develop a tentative negotiating position for COP12. However, while the United States feels that there is merit in the major recommendation presented in the document, we remain officially undecided pending additional review and consultation.

This document, prepared by the Secretariat, covers a wide range of issues related to the enforcement of the Convention, including: communication by Parties with the Secretariat, enforcement alerts issued by the Secretariat, the confidentiality of information received by the Secretariat, allegations of corruption in CITES management authorities and enforcement agencies, national interagency enforcement cooperation, specialized enforcement units and personnel, regional and international interagency enforcement cooperation, dealing with offenders, forensic science, courier and postal services, domestic enforcement, fraudulent use of CITES permits and certificates, and designation of scientific authorities by the Parties.

The document also contains a draft decision in which the Secretariat suggests that the COP authorize the Secretariat to convene an experts meeting to discuss enforcement-related issues before the Convention.

The United States is generally very supportive of the Secretariat's efforts to provide enforcement assistance and coordination with the Parties, and the United States frequently requests the Secretariat's assistance in contacting other Parties for enforcement-related issues.

28. National Laws for Implementation of the Convention (Doc. 28)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

We expect that this document, prepared by the Secretariat, will cover progress on implementation of Decisions 11.15, 11.17, 11.18, and 11.19. The most recent action on these matters took place at the 46th meeting of the Standing Committee (March 12–15; Geneva, Switzerland) in which the Committee reached agreement on a variety of actions or recommendations directed to a large number of Parties deemed by the Secretariat to have inadequate domestic legislation to effectively implement the Convention.

29. Verification of the Authenticity and Veracity of CITES Permits and Certificates (Doc. 29; Chile)

Tentative U.S. negotiating position: Support, noting budgetary concerns.

This document and draft resolution are intended to address concerns about the authenticity of CITES documents. The document identifies the unfortunate fact that fraudulent CITES documents have been discovered in use. With the improvements in technology, false documents can be created that are very difficult to distinguish from valid CITES documents issued by an appropriate CITES Management Authority. Chile proposes that all Parties establish an Internet website where copies of all CITES documents that a Party issues would be available for comparison purposes. The United States agrees that a concise and secure method of verifying the authenticity of CITES documents would be very beneficial. However, substantial logistical and legal ramifications must be considered prior to any type of website being established. Logistical concerns include the security of the site, the level of access available to Parties, and the cost of establishing the websites. For the United States, if not other Parties, there is the question of whether making such data available is in compliance with current domestic laws and regulations. Therefore, the United States would recommend that this proposal be reviewed further by the Parties and, if desirable and funding can be obtained, a working group be formed to address this particular proposal and other means to allow the verification of CITES documents.

30. Implementation of CITES in the European Community (Doc. 30; Denmark)

Tentative U.S. negotiating position: Undecided.

The United States supported the amendment in 1983 and submitted it to Congress, but it was not ratified. There were concerns because the amendment is not specific to the European Community and would allow accession of other regional economic integration organizations to CITES. In addition, at that time not all European Community members were Parties to CITES. The United States has not ratified the Gaborone amendment, and the United States is uncertain whether it will support this draft decision.

Species Trade and Conservation Issues

31. Trade in Bear Specimens (Doc. 31)

Tentative U.S. negotiating position: Oppose unless an alternative solution to address the ongoing illegal trade in some appendix I species is developed by the Parties.

This report was prepared by the CITES Secretariat, and also serves as the report of the Standing Committee as required in Decision 11.80. The report summarizes information provided or actions taken in response to five Decisions adopted at COP11 relating to trade in bear specimens. The Parties, including the United States, that have provided information to the Secretariat all report that they have adequate national legislation and enforcement measures in place to implement the Convention with regard to bears. The Secretariat concludes that the actions called for in Decisions 11.43, 11.44, 11.45, 11.46 and 11.80 have been achieved, and those Decisions can be deleted. The Secretariat further asserts that the Parties should have in place legislative and enforcement measures to effectively implement the Convention for CITES-listed species, and that those

measures need not be species-specific. Subsequently, it recommends repealing the six points listed under URGES in Resolution Conf. 10.8. The United States is hesitant to do this without having alternate options available to eliminate the illegal trade in and strengthen law enforcement efforts for appendix I bears.

32. Conservation of Leopard, Snow Leopards and Clouded Leopard (Doc. 32; India)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

33. Conservation of and Trade in Tigers (Doc. 33)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

In January 1999, we hosted the CITES Tiger Missions Technical Team in Los Angeles, California, as part of its investigations of tiger range and consumer states. This visit provided us, as well as other relevant Federal agencies, an opportunity to meet with the members of the technical team and outline law enforcement and public outreach efforts with regard to tiger conservation in the United States. The team prepared a report of its mission, which was presented at the 42nd meeting of the Standing Committee.

In October 1998, Congress amended the Rhinoceros and Tiger Conservation Act (RTCA) of 1994. The amendments allow for penalties for actual or even the attempted import, export, or sale of products labeled or purporting to contain rhino or tiger products, items, or derivative substances. The Act also directs the U.S. Fish and Wildlife Service to develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species. In April 2000, we hosted two public meetings to review and take comments on a proposed outreach plan, which was published in the **Federal Register** (65 FR 21206). Since that time, we have been active in forming partnerships with other organizations to carry out the activities of the plan. The Service also continues to be active in providing funding for tiger conservation worldwide through the Rhinoceros and Tiger Conservation Fund, authorized by the RTCA of 1994.

34. Conservation of Elephants and Trade in Elephant Specimens

(a) Illegal Trade in Ivory and Other Elephant Specimens (Doc. 34.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

(b) Illegal Hunting in Elephant Range States (Doc. 34.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

(c) Revision of Resolution Conf. 10.10 (Rev.) on Trade in Elephant Specimens (Doc. 34.3; India and Kenya)

Tentative U.S. negotiating position: Undecided.

The document for consideration was submitted by Kenya and India. The document emphasizes a need to revise Resolution Conf. 10.10 to reflect new information regarding the sale of illegal ivory and the need to educate consumers, the deletion of paragraphs which address the detection of links between poaching trends and changes in the CITES Appendices, and adding a requirement that Parties receive annual updated information on illegal ivory collected by the Elephant Trade Information System (ETIS).

The United States is undecided on whether it will support the proposed resolution from Kenya and India. The United States is continuing to evaluate this issue, and plans to develop a policy position on this proposed resolution once all the documents on ETIS and the range states' dialogue are available for review.

35. Conservation of and Trade in Rhinoceroses (Doc. 35)

Tentative U.S. negotiating position: Oppose unless an alternative solution to address the ongoing illegal trade in some appendix I species is developed by the Parties.

Resolution Conf. 9.14 (Rev.) establishes a series of standard measures that all rhinoceros range countries should implement to improve the conservation status of rhinoceros. It also directs the Standing Committee to take appropriate actions to address illegal trade in rhinoceros specimens, and it establishes a reporting system for providing information on rhinoceros activities in various range and non-range countries to the Conference of the Parties. The Secretariat proposes in this document to repeal Conf. 9.14 (Rev.) because they believe it contains generic recommendations that the Parties should be implementing for all species, and because the Parties have failed to report on their activities related to rhinoceros conservation. Whereas we understand the Secretariat's frustration with the lack of response by the Parties, we believe that rhinoceros species warrant special attention from the Parties. Some of the recommendations, such as those for tracking rhinoceros horn stocks, are specific to rhinoceros, and we believe these species, and other high-profile appendix-I species with significant ongoing conservation problems, continue to deserve special attention under CITES. In addition, we believe that range countries have demonstrated a keen interest in rhinoceros conservation at past COPs. Therefore, we are not sure that repeal of Conf. 9.14 (Rev.) is appropriate, but we would welcome recommendations to improve its effectiveness. We will be particularly looking to range countries on this issue at COP12.

36. Conservation of and Trade in Musk Deer (Doc. 36)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

This document is likely to resemble the document submitted by the Secretariat to the last meeting of the Standing Committee (SC46). Our position on that document was that there had been a lack of significant progress on the musk deer conservation actions called for in the relevant Resolution and Decisions from COP11, and that such lack of progress was of great concern to us. The existing Resolution and Decision were adopted at COP11 as a compromise to an appendix-I listing for the entire genus *Moschus.* As such, they should have formed the basis for priority action on this taxon by the Secretariat. However, adequate effort has not been devoted to

raising the funds necessary to address the needs of this genus, and other activities have been insufficient to advance the recommendations by the Parties specified in the Resolution and Decisions.

37. Conservation of and Control of Trade in Tibetan Antelope (Doc. 37)

Tentative U.S. negotiating position: Oppose unless an alternative solution to address the ongoing illegal trade in some appendix I species is developed by the Parties.

The Secretariat reported on Tibetan Antelope activities at SC46. At that time, the United States was already disappointed by the lack of real progress made on implementation of Resolution Conf. 11.8. As the current report indicates, little has been done since then. The Secretariat has assisted in the production of an identification kit, and requested China and India to inform it of any assistance they may need related to Tibetan antelope conservation (although the Secretariat just made contact with these two States almost two years after COP 11). There is no mention of activities undertaken by China, India, or Nepal for Tibetan antelope conservation. Because China is the principal range State for Tibetan antelope, its actions are critical to the long-term survival of the species. India, as the main destination for raw shahtoosh, is also a key player. This taxon deserves greater attention, but the United States suggests that the Parties might consider developing a more comprehensive approach to address this species and other appendix I species that continue to be traded illegally and commercially.

38. Controlled Trade in Specimens of Abundant Cetacean Stocks (Doc. 38; Japan)

Tentative U.S. negotiating position: Oppose.

If adopted, this resolution would support trade in whale products originating from stocks transferred from appendix I to appendix II among those Parties that are also signatories to the International Convention for the Regulation of Whaling and that have established DNA register systems to monitor such trade.

The United States believes that CITES should continue to honor the request for assistance in enforcing the moratorium on commercial whaling, which was communicated by the IWC to CITES in 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9, which call on the Parties to ''agree not to issue any import or export permit or certificate'' for introduction from the sea under CITES for primarily commercial purposes ''for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.'' While the scientific committee of the IWC has developed the Revised Management Procedure (RMP) for setting quotas if commercial whaling were to resume, the IWC has not completed the development of a Revised Management Scheme (RMS) for monitoring the catch of whales. The United States believes that any type of commercial whaling or trade should not resume until the RMS is completed and the current moratorium on commercial whaling is lifted for any stocks that enter into international trade.

39. Conservation of and Trade in Freshwater Turtles and Tortoises (Doc. 39)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document we will review it closely and develop a tentative negotiating position for COP12.

The United States has been actively involved in, and supportive of, CITES efforts in recent years regarding the trade in tortoises and freshwater turtles, and associated conservation and management issues. The United States funded and participated in the technical workshop on tortoise and freshwater turtle trade and conservation hosted by China in March 2002, and we supported adoption of the workshop's recommendations and findings. For COP12 we have co-sponsored a number of appendix II species proposals for Asian freshwater turtles with China and India, and we support other proposals submitted by China and Germany.

40. Conservation of and Trade in Pancake Tortoise *Malacochersus tornieri* (Doc. 40; Kenya)

Tentative U.S. negotiating position: Oppose because of budgetary concerns.

The pancake tortoise ranges from central Kenya southward through central Tanzania. Within that range, the species is discontinuously distributed because of its strict habitat requirements; the species is found only where suitable rock crevices and outcroppings exist in thorn-scrub and savannah vegetation (Somalia-Masai floristic region). The pancake tortoise was listed in appendix II in 1975. Kenya enacted stricter domestic measures to prohibit commercial export of the species in 1981, although the United Republic of Tanzania permits the export of farmed specimens. The pancake tortoise is a desirable and valuable species in the pet trade, and although it is captive bred with some regularity, demand for wild caught specimens remains high.

Kenya submitted a proposal to transfer the species from appendix II to appendix I at COP11. The COP11 proposal (Doc. 11.59.3, Prop. 11.39) was withdrawn by Kenya after the United Republic of Tanzania provided oral assurances that it would not permit the export of wild caught specimens. However, there appears to be ongoing illegal trade in pancake tortoises, although it is difficult to determine the origin of specimens that appear to have been collected in the wild; in 2000 and 2001 the United States received several shipments of adult pancake tortoises with permits indicating that they were born in captivity.

The Pancake Tortoise Working Group proposed by Kenya would be tasked to develop recommendations on measures to improve conservation, control trade in live specimens of the species, and analyze whether existing breeding operations for the species conform to certain conditions. Management of the trade in pancake tortoises has been problematic for many years, but we note that it might be more appropriate for the COP to authorize addressing this issue through an existing CITES mechanism, rather than through the formation of a species-specific working group. Two potential ways to address these issues in a cooperative setting, and develop consensus recommendations, are either through the Animals Committee significant trade review process in Resolution Conf. 8.9 (Rev.) (under which the pancake tortoise has previously been reviewed), or through the Animals Committee working group on the conservation of and trade in freshwater turtles and tortoises, which the United States hopes will be re-authorized at COP12.

The United States believes that either of these two Animals Committee mechanisms are appropriate, and could be productive venues to address and resolve the issues highlighted in Doc. 40. We note that the creation of new working groups is administratively and financially burdensome and it is preferable to take advantage of existing systems to address trade and implementation concerns when available.

41. Conservation of Sharks

(a) Conservation and Management of Sharks (Doc. 41.1; Australia)

(b) Conservation of and Trade in Sharks (Doc. 41.2; Ecuador)

Tentative U.S. negotiating position: Support but have budgetary and workload concerns,

Australia and Ecuador have submitted separate documents on the role of CITES in international shark conservation. Although slightly different in objective, both papers recite the history of how CITES Parties got engaged in shark conservation and prescribe a series of future initiatives to help promote adequate management for vulnerable stocks. The Australian document suggests that the CITES Animals Committee could, among other things, regularly review the conservation status of various shark populations and recommend listing priorities to the Parties. The Ecuadorean document recommends tighter cooperation between CITES and FAO to ensure that national management plans are developed and implemented. Both documents recommend an ongoing review of shark conservation by CITES bodies beyond COP12.

A series of Decisions and Resolutions since COP9 have prompted international discussion on sharks in both CITES and FAO fora. The net result of this activity has been FAO's adoption in 1999 of an International Plan of Action for Sharks (IPOA-Sharks), and ongoing monitoring by the CITES Parties of FAO success in this endeavor. Although the IPOA lays out specific elements for National Plans of Action (NPOA's) to conserve sharks (data collection, monitoring, stock assessment, *etc.*), it is purely a voluntary measure that has met with limited success in FAO member nations. Out of 87 shark-fishing nations, most of which are CITES Parties, only two (the United States and Japan) have adopted NPOA's. Fifteen other member nations have committed to developing NPOA's, but often have made this contingent on external assistance and funding.

We agree that national implementation of the IPOA for sharks has been thus far disappointing but the blame lies with the Parties, not FAO. However, we are reluctant to endorse the idea of increasing the workload of the Animals Committee to include intensive monitoring and review of non-listed species. However, it is completely within the terms of reference and the history of the Animals Committee for the Committee to review and promote listings for specific shark taxa and monitor and review the trade of listed shark species.

42. Conservation of Sturgeons and Labeling of Caviar

(a) Implementation of Resolution Conf. 10.12 (Rev.) on Conservation of Sturgeons (Doc. 42.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

This document is the report from the Animals Committee on the Implementation of Resolution Conf. 10.12 (Rev). At the time this notice was prepared, this document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

At COP11, Decision 11.59 was adopted by the Parties which requested that all Parties trading in sturgeon and paddlefish report to the Secretariat on the progress made in implementing Resolution Conf. 10.12 (Rev.), Conservation of sturgeons, before the 18th meeting of the Animals Committee. Based on the information provided by the Parties, the Secretariat submitted a report to the 18th meeting of the Animals Committee. Decision 11.96 directs the Animals Committee to review the Secretariat's report, decide upon actions to be taken, and report at COP12.

(b) Consolidation of Resolutions Relating to Sturgeons and Trade in Caviar (Doc. 42.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, this document was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

Parties are just beginning to implement Conf. 11.13 requirements that are in addition to any domestic requirements. The proposed revisions to Conf. 11.13 presented at the 18th Animals Committee meeting include provisions covering the labeling of re-exported caviar. The United States maintains that there should be a system in place for exports that can be evaluated and modified as needed to ensure it is working effectively before moving forward with labeling of re-exports.

43. Conservation of Seahorses and Other Members of the Family Syngnathidae (Doc. 43)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

As per the requirements of Decisions 11.97 and 11.153, the Secretariat convened a technical workshop on the conservation of seahorses and other fishes in the family Syngnathidae (*e.g.*, pipefish and sea dragons). This workshop was held May 27–29, 2002 (Cebu, Philippines), and the United States sent a representative. One aspect of the workshop was to evaluate a draft proposal written by the United States to include seahorses in appendix II of CITES (*see* Proposal 37, below). The workshop participants spent three days examining current trade data, evaluating national and regional management approaches for seahorses, and considering the efficacy of a potential appendix-II listing proposal. We expect Doc. 43 to summarize the workshop findings, which includes an endorsement of the U.S. listing proposal, recommendations for an 18-month delayed implementation of the listing if adopted, and suggestions for minimizing the impact on fishing communities that harvest seahorses. The United States is pleased to have our seahorse listing proposal endorsed by this body of scientists and trade experts, and will consider the other recommendations found in Doc. 43 once we have had a chance to fully review and evaluate the document.

44. Conservation of and Trade in *Dissostichus* Species (Doc. 44; Australia)

Tentative U.S. negotiating position: Undecided.

Australia submitted this draft resolution as a companion to its proposal to list *Dissostichus* spp. (both Patagonian and Antarctic toothfish) on CITES appendix II (*see* section 66, Prop. 39 of this notice). These species are currently managed under the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) in designated waters surrounding the Antarctic continent. This draft resolution offers details on how an appendix-II listing for toothfish might be implemented. It recommends, among other provisions, that CITES Parties agree that the advice of the CCAMLR Scientific Committee

concerning annual catch limits be considered a non-detriment finding for *Dissostichus* spp. within the CCAMLR Convention Area for CITES purposes. It also asks that Parties accept that a *Dissostichus* Catch Document (DCD) is equivalent to, and an acceptable substitute for, a certificate of introduction from the sea or an export permit under CITES.

Under Australia's proposal, Parties to CITES whose trade in *Dissostichus* is conducted using CCAMLR's Catch Documentation Scheme (CDS) within the CCAMLR Convention Area will be considered as having met the requirements of CITES. However, trade in toothfish harvested outside the CCAMLR Convention Area would be subject to CITES permitting requirements.

If agreed to by the Parties, this would be the first appendix-II listing for a commercially-traded marine fish species. The effect of this listing proposal, if adopted, would combine the regulatory regime of a regional fishery management organization (RFMO) with that of CITES. The Parties would need to resolve a number of implementation issues, including how the two permitting systems might work side by side, and the difficulties in making scientific non-detriment findings for high seas species. These matters, and others related to potential listings of high seas marine fish species, have not been fully explored by the Parties. In addition to considering how the two regulatory regimes would work in concert, the United States has not yet determined how our position would affect or be affected by the proposed cooperation with the United Nations Food and Agriculture Organization (FAO) regarding international trade in marine fish species. At this time, the United States is undecided as to our positions on issues related to CITES's role in international toothfish trade.

45. Trade in Sea Cucumbers in the Families Holothuridae and Stichopodidae (Doc. 45; United States)

Tentative U.S. negotiating position: Support.

In our **Federal Register** notice of April 18, 2002 (67 FR 19207), we stated that we were seeking additional information (particularly on abundance, identification techniques, trade volumes, and other range country interest in CITES listing) while considering submitting an appendix-II listing proposal for sea cucumbers. Based primarily on our consultations with other range countries for these species, we believed the most appropriate approach for COP12 was to submit a discussion paper on the issue of trade in these species, similar to what has been done in the past for other taxa, such as Syngnathidae (seahorses and their relatives). Rather than submit a proposal while significant questions exist about the trade in these species and the impact on them, we believed it would be more prudent to submit a discussion paper containing the information we have been able to gather at this point in time. The Conference of the Parties can then decide how to proceed and whether to further consider the listing of these species in the CITES Appendices.

46. Biological and Trade Status of *Harpagophytum* (Doc. 46)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document we will review it closely and determine whether our tentative negotiating position for COP12 needs to be changed.

The genus *Harpagophytum*, comprises two species, *H. procumbens* and *H. zeyheri*, native to southern Africa. The common name, devil's claw, is derived from the tough, thorny barbs, that grow on the woody fruits. Neither species is currently listed in the CITES appendices. The natural habitat of these perennial herbs are steppe-like arid zones of Angola, Botswana, Namibia and South Africa and, to a lesser extent, in Mozambique, Zambia and Zimbabwe. Flowers and leaves of the plant can only be found during the short rainy season. To survive the dry period, the plant forms water-storing secondary root tubers branching off horizontally from the primary taproot. These secondary storage tubers contain chemical compounds which have medicinal applications. Devil's claw is used in western and traditional medicine as an analgesic and anti-inflammatory. European countries have used it for years to treat rheumatic problems. The tubers are collected and sliced into thin disks and dried before export. A main threat to *H. procumbens* is the large-scale harvest of its secondary storage tubers using detrimental harvesting techniques, to meet international market demand.

Germany proposed *Harpagophytum procumbens* and *H. zeyheri* for inclusion in appendix II at COP11. However, due mainly to the objections of the range nations of these species, the proposal was not adopted. Instead, the Parties adopted two Decisions (11.63 and 11.111) designed to gather and analyze biological and trade information on the genus *Harpagophytum.* The Plants Committee was tasked with preparing a report on the biological and trade status of the genus for COP12. As a result of these Decisions, Dr. John Donaldson, African Regional Representative on the Plants Committee, prepared a report summarizing the available information on the trade, management, and biological status of *Harpagophytum*, which he presented at the 12th meeting of the Plants Committee (PC12; Leiden, The Netherlands, May 2002). Also, a regional devil's claw conference was held in Namibia in February 2002. Participants included representatives of the various stakeholders in the range countries. A report on the outcome of the conference was presented at the PC12. Finally, Germany, a major importer of *Harpagophytum*, presented a report at PC12 on imports of the genus into Germany.

The Plants Committee supported the recommendations made in the reports presented at PC12, and the Regional Representative on the Plants Committee from Africa was tasked with preparing a report on the issue for COP12. We expect the document (COP12 Doc. 46) to be this report. The United States supports the efforts of the Regional Representative for Africa, the Namibian devil's claw working group, and Germany in reviewing biological and trade data and improving regional cooperation to ensure the sustainable management of *Harpagophytum*, and anticipates tentatively supporting document COP12 Doc. 46.

47. Conservation of *Swietenia macrophylla:* Report of the Mahogany Working Group (Doc. 47)

Tentative U.S. negotiating position: Support with the exception of extending the group terms of reference through COP13 which would depend on the success of the appendix II listing proposal.

Decision 11.4 regarding conservation of *Swietenia macrophylla* called for a mahogany working group to meet to consider, among other things, the effectiveness of the current and potential appendix-III listings, the status of the species, legal and illegal trade, and ways to increase the number of range states listing mahogany in appendix III. This meeting was convened as the Mahogany Working Group meeting in October 2001 in Bolivia. As a participant of the Working Group and a financial supporter of the meeting, the United States generally supports the conclusions and

recommendations of the Working Group.

48. Implementation of Resolution Conf. 8.9 (Rev.) on Trade in Specimens of Appendix-II Species Taken From the Wild

(a) Revision of Resolution Conf. 8.9 (Rev.) (Doc. 48.1)

Tentative U.S. negotiating position: Support.

Resolution Conf. 8.9 (Rev.) and Decisions 11.106 and 11.108 of the COP outline a process to review the implementation of Article IV of the Convention *vis-a-vis* appendix-II species that are traded in significant quantities. At AC17, the Secretariat introduced document AC17 7.4, drafted by the African Resources Trust (ART). The document highlighted problems with the Significant Trade Process, including discrepancies between Resolution Conf. 8.9 (Rev.) and Decisions 11.106 and 11.108, and suggested ways to correct such problems. Based on this document drafted by ART and discussions of a working group at AC17, the Secretariat prepared for AC18 document AC18 Doc. 7.3, which contained a revised draft version of Resolution Conf. 8.9 (Rev.). The revised draft resolution integrated all pertinent decisions dealing with the Significant Trade Process with Resolution Conf. 8.9 (Rev.). At AC18, a working group, of which the United States was a member, reviewed and amended the draft resolution. This revised draft resolution was then forwarded to PC12 for further review and comment prior to its submission at COP12. As an active member of the working groups involved in the revision of Resolution Conf. 8.9 (Rev.) at AC18 and PC12, the United States supports the submission of this document by the Secretariat.

(b) *Saiga tatarica:* Summary of the CITES-sponsored Workshop in Kalmykia in May 2002 and Presentation of the Draft Conservation Action Plan (Doc. 48.2; United States)

The United States withdrew this agenda item.

49. Nationally Established Export Quotas for Appendix-II Species: the Scientific Basis for Quota Establishment and Implementation (Doc. 49; United States)

Tentative U.S. negotiating position: Support.

This document focuses on the scientific basis for establishment and implementation of nationally established export quotas for appendix-II species (*i.e.*, appendix-II export quotas established voluntarily by individual Parties to the Convention) reported to the CITES Secretariat. The purpose of this discussion paper is to outline these concerns, and provide a basis for further discussion and possible action. We have highlighted five principal issues of concern: (1) Lack of a common understanding of the relationship between non-detriment findings and nationally established quotas for appendix-II species; (2) lack of a common understanding of the relationship between non-detriment findings and revisions to nationally established quotas for appendix-II species; (3) lack of a mechanism to review the biological basis of quotas; (4) lack of an agreed-upon mechanism for addressing quota overages; and (5) lack of specific requirements in reporting quotas. These issues are complex, particularly when viewed from a variety of perspectives, such as those of an exporting Party, importing Party, or from elsewhere. We believe they could best be addressed in a working group at COP12, potentially followed by an inter-sessional Export Quota Working Group, as proposed in Annex 3 of the companion document (Doc. 50.2).

Trade Control and Marking Issues

50. Management of Export Quotas

(a) Improving the Management of Annual Export Quotas and Amendment of Resolution Conf. 10.2 (Rev.) Annex 1 on Permits and Certificates (Doc. 50.1; Germany)

Tentative U.S. negotiating position: Support, with the exceptions described below.

We believe this document constitutes a positive contribution to discussions at COP12 on the establishment and implementation of appendix II export quotas. The United States has also submitted two documents in this area (Docs. 49 and 50.2). We believe the basic assumptions and findings underpinning this document and those submitted by the United States are very similar. While we believe that a modification to Resolution Conf. 10.2 (Rev.), as proposed in Doc. 50.a, could be part of a solution to address shortcomings in the current export quota system, the United States hopes that these issues will be openly discussed at COP12 in a working group so that an inclusive approach to this issue can be developed, one that can be implemented and enforced by all CITES Parties.

(b) Implementation and Monitoring of Nationally Established Export Quotas for Species Listed in Appendix II of the Convention (Doc. 50.2; United States)

Tentative U.S. negotiating position: Support.

This document discusses trade records for appendix II species covered by nationally established export quotas, and includes discussion of problems implementing these quotas, such as permit issuance, interpretation of reported quotas, and monitoring and reporting the use of export quotas. Doc. 50.(b) also includes a discussion of other types of export quota systems used in CITES, and contains text for two Decisions for the consideration of the Parties at COP12. The issues associated with the administration and implementation of nationally established export quotas are complex, particularly when viewed from the perspectives of affected stakeholders, such as that of an exporting Party, an importing Party, or from elsewhere. Due to the complexity of the issues involved, the variety of different perspectives and interests associated with these issues, and the submission of related documents by Germany (see Doc. 50.1, above) and the United States (Doc. 49, above), we believe it would be best to address them in a working group at COP12. Assuming that all issues could not be addressed and resolved at COP12, this working group could be followed by an inter-sessional ''Export Quota Working Group,'' as proposed in Annex 3 of this document (Doc. 50.2).

51. Trade in Time-Sensitive Research Samples (Doc. 51)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

The agenda item refers to the ongoing review of trade in biological samples by the CITES Parties. At COP11, Switzerland, Germany, and the United Kingdom submitted a draft resolution (Doc. 11.45.1) to amend Resolution Conf. 9.6 to exempt certain tissue samples as not readily recognizable parts and derivatives. The draft resolution was not adopted. Instead, a number of decisions were adopted that directed the Animals Committee (Decision Nos. 11.103–105) to identify and evaluate certain aspects of biological samples, and directed the Standing Committee (Decision Nos.

11.87–11.88) to consult with the Secretariat of the Convention on Biological Diversity and to make recommendations on enforcement and implementation of trade in these types of samples for COP12. The United States participated in a working group of the Standing Committee. We think it is important to find simplified permitting and inspection procedures to allow for the timely movement of biological samples, both for scientific research and for commercial trade in high-volume appendix-II specimens.

52. Movements of Collections of Samples

(a) Movement of Sample Reptile Skins and Other Related Products (Doc. 52.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

This document proposes the establishment of procedures that would allow shipments of sample products, such as shoes or belts, to be moved across international borders for the purpose of displaying the samples at trade shows or exhibitions. The United States is interested in developing a system that would allow for easier movement of such samples in cases where the sample would be used to generate legitimate sustainable trade in appendix II species, where the sample is not for sale while outside of its originating country, and would be returned to the originating country at the conclusion of the trade show or exhibition.

(b) Use of Certificates for Movements of Sample Collections, Covered by an ATA or TIR Carnet and Made of Parts or Derivatives of Species Included in Appendices II and III (Doc. 52.2; Italy and Switzerland)

Tentative negotiating position: Support, if changes can be made to adapt the system so it can be implemented in Parties like the United States.

The United States recognizes the need to streamline the administrative procedures required for the cross-border movement of these sample products. In addition, adoption of this proposal could potentially be beneficial to exporting countries, and the United States, in terms of showcasing their products and fostering trade in products harvested from sustainable ranching or sound management practices, while still adhering to the conservation requirements for CITES-listed species. The current version of this draft document and resolution contains some proposed items that are not compatible with U.S. regulations and permitting and enforcement procedures. The United States intends to address these issues with the proposing Parties during a working group at COP12 in an attempt to find a workable solution and adopt a resolution that will meet the needs of all of those that can legally implement such a system.

53. Trade Regimes for Timber Species (Doc. 53)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

At COP11, the Parties directed the Secretariat in Decision 11.155 to investigate the potential for silvicultural techniques to provide useful bases for establishing trade regimes for timber species. At its 10th meeting (Shepherdstown, West Virginia, December 2000), the Plants Committee agreed that timber coming from managed natural forests should be regarded as ''wild,'' because the current CITES definition of ''artificially propagated'' could not be applied, owing to the absence of ''controlled conditions.'' It was also agreed that the Secretariat should further explore the subject and consider the possibility of creating a special source code for timber from silviculturally managed forests. At the 11th meeting of the Plants Committee (Langkawi, September 2001), it was agreed that the Secretariat would collate information on the definition of different production systems, source codes for silvicultural techniques, and certification of sustainably managed forests and the certification's compatibility with the scientific approach to making a non-detriment finding. The United States did not support the Secretariat's proposal, and cautioned that Scientific Authorities should not consider certification or eco-labeling as a substitute for conducting rigorous reviews of all available information in making non-detriment findings. At the 12th meeting of the Plants Committee (Leiden, The Netherlands, May 2002), TRAFFIC International presented a proposal to conduct a study to assess the existing schemes for certification of sustainably managed forests and their compatibility with the scientific requirements of making a non-detriment finding for trade in appendix-II tree species. The Plants Committee did not agree to fund the proposed study, concluding that the evaluation of certification schemes should be postponed until such schemes are better defined. We expect that Doc. 53 will be the report of the Secretariat on the progress of the issue of trade regimes for timber species since the eleventh meeting of the CITES Conference of the Parties.

Exemptions and Special Trade Provisions

54. Trade in Personal Effects

(a) Trade in Personal Effects (Doc. 54.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

The United States would like to see the Parties address the issue of trade in personal effects. Currently, there is not a uniform approach to handling personal effects, even though Article VII, paragraph 3, of the Convention identifies an exemption for such items. The United States recognizes the personal effects exemption, as do many other Parties, but not every Party is implementing the exemption.

(b) Personal Effects Made of Crocodilian Leather (Doc. 54.2; Venezuela)

Tentative U.S. negotiating position: Oppose.

This document identifies the problem of Parties implementing Article VII, paragraph 3, in an inconsistent manner, or not implementing it at all. The document points out that failing to allow the personal effects exemption may, in certain circumstances, have a negative effect on conservation efforts that have been put in place for crocodilian species. Venezuela has submitted a draft resolution that would define ''personal and household effects'' and stresses that Parties should amend their domestic laws and regulations to allow for the exemption outlined in Article VII, paragraph 3. The United States agrees with encouraging Parties to implement the exemption for personal effects. This document and Doc. 54.1 both address the same issue, however, this document focuses only on crocodilian products. The United States feels that if a resolution is adopted at COP12 it should address all personal

and household effects, not just crocodilian products.

55. Operations That Breed appendix-I Species in Captivity for Commercial Purposes

(a) Revision of Resolutions Conf. 8.15 and Conf. 11.14 on Guidelines for a Procedure To Register and Monitor Operations That Breed appendix-I Animal Species for Commercial Purposes (Doc. 55.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

This document will probably consist of a report from the AC on its activities on preparation of Annex 3 of Resolution Conf. 11.14, which is to replace Resolution Conf. 8.15. At COP11, Parties adopted a resolution for the registration of commercial captive-breeding facilities for appendix-I animal species (Conf. 11.14). In addition, Decision 11.101 requested the AC to compile a list of appendix-I species that are critically endangered in the wild and/or known to be difficult to breed or keep in captivity (*i.e.*, Annex 3).

Under Conf. 11.14, facilities breeding appendix-I species for commercial purposes and included in Annex 3 must become registered with the CITES Secretariat, thus providing all Parties with an opportunity to comment on whether or not these operations should be registered. Facilities breeding appendix-I species not included in Annex 3 must register with their country's management authority, but are not required to be registered with the Secretariat or subject to consultation with other Parties, including range States. Once Annex 3 is compiled, Conf. 11.14 will replace Conf. 8.15.

At AC16, a working group produced by general consensus definitions for the terms ''critically endangered in the wild,'' ''difficult to keep,'' and ''difficult to breed.'' However, the members of the AC did not reach consensus about the proposed definition for ''critically endangered in the wild,'' so the matter was deferred to AC17.

At AC17, the members of the AC agreed to conduct a pilot project to compile three alternative lists of appendix-I species that may be considered difficult to keep or breed in captivity, *i.e.*, species that are categorized in the IUCN Red List 2000 as (1) critically endangered in the wild, (2) critically endangered or endangered in the wild, and (3) critically endangered, endangered, or vulnerable in the wild. The AC decided to initially limit this exercise to the Reptilia, and to review the outcome of the project at AC18. The IUCN Crocodile Specialist Group (CSG) was later contracted by the Secretariat to conduct this review.

At AC18, the CSG presented its report, which found that the alternative lists of Appendix-I reptiles difficult to keep or maintain in captivity would not differ significantly from the list of all reptile species currently listed in Appendix I. Furthermore, in a working group at AC18, most delegates agreed on the right of range States to place species in Annex 3. The working group concluded that further work was needed on the registration of Appendix-I breeding facilities for commercial purposes.

(b) Applications To Register Operations That Breed appendix-I Species in Captivity for Commercial Purposes (Doc. 55.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

This document may include a proposal from the United Kingdom to register a green turtle (*Chelonia mydas*) captive-breeding operation on Grand Cayman, Cayman Islands (United Kingdom). The Service is currently reviewing that application as requested by CITES Notification to the Parties No. 2002/039 (''Control of operations that breed Appendix-I species in captivity for commercial purposes'') issued by the Secretariat on June 24, 2002. We believe that the Parties may be asked to vote on this proposal at COP12 if any Party objects to the registration of the facility through the notification process, as described in Resolution Conf. 8.15.

56. Non-commercial Loan, Donation or Exchange of Museum and Herbarium Specimens (Doc. 56; United States)

Tentative U.S. negotiating position: Support.

Please see our **Federal Register** notice of April 18, 2002 (67 FR 19207) for a discussion of why we submitted this document.

57. Traveling Live-animal Exhibitions (Doc. 57; Russian Federation)

Tentative U.S. negotiating position: Oppose.

The document addresses concerns that the Russian Federation has about the current Resolution Conf. 8.16 and why this resolution does not cover all of the animals that the Federation would like to be covered by an exemption. The United States supported and continues to support the current resolution (Conf. 8.16). We believe that the resolution provides Parties with a mechanism to allow the international movement of animals that fall within the exemption provided by Article VII, paragraph 7, of the Convention. While there may be a need for better clarification of some aspects of the current resolution to assist Parties in the implementation of the resolution, we do not feel that any substantial changes are required. The revised resolution proposed by the Russian Federation goes beyond what is allowed under the Convention by giving an exemption to all animals within a traveling exhibition, including animals that were recently removed from the wild. The proposed revision would allow the exporting country to issue a document for any animal without addressing the no detriment criterion of Article III or IV. The United States could not support such a resolution.

Amendment of the Appendices

58. Criteria for Amendment of appendices I and II (Doc. 58)

Tentative U.S. negotiating position: Undecided.

This document and its associated annexes were submitted by the Secretariat. This agenda item prompts the COP to decide on what should occur regarding review of Resolution Conf. 9.24, which contains the criteria for inclusion of species in appendices I and II. This document consists of five Annexes:

Annex 1: Explanation of why the criteria review process concluded that the current Resolution Conf. 9.24 should be amended;

Annex 2: The timeline for the review of the listing criteria from COP11 onwards;

Annex 3: Explanation of the proposed amendments to Resolution Conf. 9.24;

Annex 4: A ''clean'' version of the amended Resolution; and,

Annex 5: The report on the review of Conf. 9.24 from the Chairmen of the Animals Committee and the Criteria Working Group (CWG) submitted to the Standing Committee (Annex 5a); and the report on the review of Conf. 9.24 from the Chairman of the Plants Committee (Annex 5b) submitted to the Standing Committee.

The terms of reference for the review of the listing criteria (Decision 11.2)

specifically called for a consensus report to be developed by the Chairs of the Animals and Plants Committees for COP12. However, the Chairs of the Animals and Plants Committees did not reach consensus on the appropriate revisions to the listing criteria. In Annex 5b, the Chair of the Plants Committee explains why she believes the terms of reference for the review of the listing criteria have been violated and why she, therefore, does not endorse the current revisions shown in Annex 4. The Chairs of the Animals Committee and the CWG provide their rebuttal to these arguments in Annex 5a.

The terms of reference for the review of the listing criteria laid out a specific protocol for the Animals and Plants Committees to choose taxa (both listed and non-listed under CITES), evaluate them, and decide whether Conf. 9.24 was applicable and useful for analyzing their conservation status. This analysis was intended to guide the CWG in revising Annexes 1, 2, 5, and 6 to Conf. 9.24. The Chair of the Plants Committee claims that this process has largely been ignored, and is proposing that the COP advocate a process to continue the criteria review beyond COP12. The Animals Committee and CWG Chairs claim that the review complied with all the terms of reference. Their Chairs' rebuttal focuses largely on how Parties' comments were accommodated, timetable adherence, and the inclusion of the viewpoints of the fisheries experts in the final revisions. However, they do not discuss the issue of the missing taxon reviews.

In our comments on CITES Notification to the Parties No. 2001/37 and our interventions at the 46th meeting of the Standing Committee (SC46), we concurred with the Chair of the Plants Committee in that the taxon-specific reviews called for in the terms of reference had not occurred, excepting the standard review of the appendices (called for in Conf. 9.24) and the FAO work on marine species. In addition, Decision 11.2 specifically calls for examination of Annexes 1 and 2 (appendix-I and appendix-II listing criteria), the definitions in Annex 5, and the species proposal format shown in Annex 6. There is no mandate to the CWG for revision of the precautionary principle nor the ''special cases'' described in Annexes 3 and 4 of Conf. 9.24. However, the Chairs of the CWG and the Animals Committee have twice proposed substantial changes to these Annexes. There has been no formal discussion in the Animals and Plants Committees of how the criteria and the terminology of Conf. 9.24 specifically apply to various taxa of plants and animals (except for one presentation on fisheries methodology made at the December 2000 joint meeting of the two committees in Shepherdstown, West Virginia). This places the Parties in the uncomfortable position of changing the criteria without an analysis of their current strengths and weaknesses.

Nonetheless, the United States has invested significant amounts of time and money in the criteria review process, including participation in both CWG meetings, hosting the joint Animals and Plants Committee meeting, reviewing several taxa in the periodic Review of the Appendices, and critically evaluating Conf. 9.24 for marine species. We believe that the reports now available to the COP reflect significant effort and thought on behalf of the Chairmen and the Parties, and explore many important aspects of the current listing criteria. Furthermore, we believe that the fundamental principles and precautionary approaches laid down by the Parties in Conf. 9.24 remain intact in the final revisions. The current suggested revisions (with noted exceptions) serve mainly to clarify terminology and harmonize Conf. 9.24 with other resolutions. It is our position that the Parties should seek to retain the aspects of the review that appear to have the support of a majority of Parties, but consider continuing the review of Resolution Conf. 9.24 to fulfill the original terms of reference.

59. Amendment of the Appendices With Regard to Populations (Doc. 59)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

60. Annotations for Medicinal Plants in the Appendices (Doc. 60)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

Annotations of the listings of medicinal plants in the Appendices have been a topic of discussion at recent meetings of the Plants Committee, and we anticipate that this agenda item may be related to these proceedings. The focus of these discussions is the accuracy of terms used in the annotations and the lack of consistency of terminology used in the annotations. At the eleventh meeting of the Plants Committee, the United States prepared a document containing definitions of various terms used in medicinal plant annotations. This work was continued to the twelfth meeting of the Plants Committee, but was not completed. The United States will support any effort to ensure that annotations of medicinal plants listed in the Appendices are accurate as to the parts or products referred to, and will also support efforts to harmonize terms used for different plants when the same part or product is covered by annotations.

Other Themes and Issues

61. Establishment of a Working Group To Analyse Relevant Aspects of the Application of CITES to Marine Species (Doc. 61; Chile)

Tentative U.S. negotiating position: Support but note budgetary concerns and possible duplication of effort if an implementation committee or sub-committee is formed.

This draft resolution proposes that a Working Group on Marine Species be established by the CITES Animals Committee to provide technical procedures and recommendations to promote the effective application of CITES for marine species. Chile proposes that the group could develop a definition of ''introduction from the sea'' in accordance with provisions of international laws or agreements, including the United Nations Convention on the Law of the Sea of 1982 (UNCLOS). This group would be a venue for discussion of technical questions from the FAO Committee on Fisheries, and could recommend a procedure for effective collaboration with other international organizations responsible for marine species.

The United States recognizes the need for input into the CITES process from fisheries resource managers and has submitted a document (Doc. 16.2.2) asking the CITES Parties to suggest means for developing and finalizing a Memorandum of Understanding (MOU) between CITES and FAO. Such an MOU would facilitate exchange of information and technical advice on CITES provisions and requirements related to any listed commercially traded fish species.

The United States supports the goal of Chile's resolution, although we have not developed clear positions on all of the specifics and implications of such a group. The United States believes that such a Working Group should report to the Standing Committee, as did the

Timber Working Group, rather than to the Animals Committee. The United States believes that if such a working group were to be established, its subject matter should be limited to marine fish and invertebrate species only. Finally, the United States is concerned about the budgetary implications of such a Working Group and whether it would impose additional work burdens on the Secretariat.

62. Bushmeat (Decision 11.166)

Tentative U.S. negotiating position: Support.

This document was prepared by the CITES Secretariat, and summarizes the activities of the CITES Bushmeat Working Group (CBWG) since COP11. Decision 11.166 called for the establishment of a working group of interested range and donor States to examine issues raised by the trade in bushmeat, with the aim of identifying solutions that can be implemented by the range States. The CBWG consists of representatives from Cameroon, the Central African Republic, the Congo, Democratic Republic of Congo, Equatorial Guinea and Gabon. Supported in part by grants from the U.S. Fish and Wildlife Service, the CBWG has met several times since COP11 to review the status of the bushmeat trade and develop a framework for implementing priority actions. The document contains a draft Decision calling for the maintenance of the CBWG until COP13. In light of the impressive accomplishments of the CBWG since COP11, the United States supports the maintenance of the working group until COP13.

63. The Rescue of Dependent Apes From War Zones (Doc. 63; Kenya)

Tentative U.S. negotiating position: Support as long as the countries involved in such trade ensure such an exemption does not allow or encourage illegal trade of primates.

The document proposes an exemption to CITES permitting requirements in order to evacuate captive great apes from war zones to other countries when no alternative refuges are available in the country where they are being kept. Evacuated apes would be transferred to the nearest available government-approved and professionally accredited sanctuary on a temporary basis until long-term welfare of the animal can be assured in the country of export. To be eligible for this exemption the animal must be in captivity and need human care that may become unavailable due to wartime conditions, the transfer must be completely non-commercial, and the transfer must be carried out under the direction of the CITES Management and Scientific Authorities of both countries under a system established by the CITES Secretariat. At this time, the proposal only directs the Secretariat to establish a system by which Parties could implement this procedure. This system would then be incorporated into a proposal to be presented at a later COP for final approval. The United States suggests that if a permanent implementation body is formed within the Convention that this issue be referred to that body for resolution.

The United States agrees that great apes, which are all listed in appendix I of CITES, should be afforded the maximum protection available. The United States supports the proposed resolution to direct the Secretariat to establish a system, to be presented at a later COP, to temporarily transfer imperiled captive great apes out of war zones to nearby institutions. The United States suggests that the Parties have final approval to ensure that CITES safeguards are being enforced and that the specifications for transfer of specimens detailed above are met.

64. Trade in Traditional Medicines (Doc. 64)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

Both the Plants and Animals Committees were directed to review the trade in CITES-listed species for traditional medicines. Neither committee was able to fully carry out this investigation, due to a lack of basic information on the many ingredients and uses of CITES-listed species parts and derivatives in traditional medicines, worldwide. Decision 11.165, adopted at COP11, directed the Secretariat to compile an inventory of operations where artificial propagation or captive breeding of CITES species is conducted for medicinal purposes, and to continue developing the list of species of plants and animals and their parts traded for medicinal purposes.

65. Publicity Materials (Doc. 65)

Tentative U.S. negotiating position: Support.

This document provides a review of Decision 11.131 and actions that have been taken since COP11 to meet its requirements. This decision directed the Secretariat to develop a work plan to prepare publicity materials for animal and plant species included in the Appendices. In addition to serving in an advisory capacity to Parties wishing to develop outreach materials, the Secretariat has taken other actions to fulfill its duties in regard to this decision. The Secretariat has produced a brochure for public distribution and for use in workshops to create general awareness of the aims of CITES and animals and plants included in its Appendices. The Secretariat has also changed the focus of its newsletter, *CITES World,* to provide articles that highlight initiatives taken by Parties on issues of importance to all Parties. In future outreach materials, the Secretariat plans to highlight the positive effects of CITES on the conservation and sustainable utilization of wild species. The United States supports efforts by the Secretariat and all Parties to increase public awareness of the animals and plants listed in the CITES Appendices and the functioning of CITES.

Consideration of Proposals for Amendment of Appendices I and II

66. Proposals to Amend appendices I and II (Doc. 66)

Prop. 1. Amendment of Annotation 607 to read: ''The following are not subject to the provisions of the Convention: (a) synthetically derived DNA that does not contain any part of the original; (b) urine and feces; (c) synthetically produced medicines and other pharmaceutical products such as vaccines that do not contain any part of the original genetic material from which they are derived; and (d) fossils. Submitted by Switzerland.

Tentative U.S. negotiating position: Support.

The United States was a member of a working group established by the CITES Standing Committee at its 45th meeting. The working group was charged, in part, with identifying types of samples that may be considered as not subject to the provisions of the Convention. This proposal from Switzerland reflects the agreement reached by that working group. We believe that exempting these four classes of specimens will have no impact on the conservation of CITES-listed species. However, we also believe that there may be a need to clearly define some of these terms, such as ''fossil,'' to ensure that such an exemption is uniformly applied by the Parties.

Prop. 2. Annotation of taxa *Agapornis* spp. (lovebirds), *Platycercus* spp. (rosellas and parakeets), Barnardius spp. (rosellas and parakeets), *Cyanoramphus auriceps* (yellow-crowned parakeet),

Cyanoramphus novaezelandiae (New Zealand parakeet), *Psittacula eupatria* (Alexandrine parakeet), *Psittacula krameri* (ring-necked parakeet), and *Padda oryzivora* (Java sparrow) with the following text: Color morphs produced by captive breeding are considered as being of a domesticated form and are therefore not subject to the provisions of the Convention. Submitted by Switzerland.

Tentative U.S. negotiating position: Undecided.

The species listed in this proposal are frequently bred in captivity to produce color morphs (*i.e.*, mutations). Switzerland submitted a discussion paper at the first European Regional Meeting of the CITES Animals Committee (November 2001) noting that managing the trade in these birds requires significant resources and has little or no relevance to conservation of wild populations of these species. The United States seeks input on whether or not some color morphs in the proposed species might be difficult to distinguish from normal-colored wild stock as well as on whether the proposal is permissible given the definition of specimen in Article I of the Convention. We also question the rationale for referring to these as ''domesticated,'' since normal-colored specimens of these species might actually have been bred in captivity for more generations than color morphs, but under this proposal would not be exempted as ''domesticated.''

Prop. 3. Transfer of Black Sea bottlenose dolphin (*Tursiops truncatus ponticus*) from appendix II to appendix I. Submitted by Georgia.

Tentative U.S. negotiating position: Support.

Bottlenose dolphins (*Tursiops truncatus*) were included in appendix II on June 28, 1979, and are distributed worldwide in temperate and tropical waters. The subspecies *Tursiops truncatus ponticus* is endemic to the Black Sea, isolated from other populations of bottlenose dolphins in the Mediterranean and other waters. Black Sea bottlenose dolphins look almost identical to those from other regions, and their genetic distinctness is unknown. At COP11, the United States withdrew a proposal to transfer the subspecies to appendix I when Georgia (co-sponsor and range country) could not attend. It is believed that overall abundance of dolphins in the Black Sea has declined greatly due to over-exploitation into the 1980s for human consumption and industrial products. A large purse-seine fishery conducted by the former Soviet Union, Bulgaria, and Romania collapsed in the 1960s due to over-harvest, and large takes by rifle continued by Turkey until a ban in 1983. The proponents state that the population meets two of the biological criteria for inclusion in appendix I from CITES Resolution Conf. 9.24, Annex 1:

Criteria B: The wild population has a restricted area of distribution and is characterized by (iii) a high vulnerability due to the species' biology or behavior, and (iv) an observed, inferred or projected decrease in the number of individuals, area or quality of habitat, and reproductive potential.

Criteria C (iii): A decline in the number of individuals in the wild, which has been inferred or projected on the basis of levels of patterns of exploitation, and threats from extrinsic factors such as the effects of pathogens, competitors, parasites, predators, hybridization, introduced species, and the effects of toxins and pollutants.

In our **Federal Register** notice of April 18, 2002 (67 FR 19207), we generally agreed with this assessment, noting the multitude of threats to wild Black Sea bottlenose dolphins. The exact size of the Black Sea population is unknown, and no estimates exist of sustainable levels of take. As signatories to the Bern Convention, range countries Bulgaria, Romania, Turkey, and Ukraine have all banned possession and internal trade in *T. truncatus.* In addition, the Parties to the Bern Convention adopted a resolution in November 2001 urging that this subspecies be transferred to appendix I of CITES. The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea, and Contiguous Atlantic Area (ACCOBAMS) adopted a similar resolution at a meeting in February 2002, and both of these resolutions were forwarded to the CITES Animals Committee. The Animals Committee could not agree on the biological status of the Black Sea population, and has not endorsed or rejected the idea of listing in appendix I. Furthermore, the genetic distinctiveness of Black Sea bottlenose has yet to be determined. Geneticists with the National Marine Fisheries Service are currently working to obtain Black Sea bottlenose dolphin tissue specimens from range countries, and will make genetic comparisons between these samples and those from other bottlenose dolphin populations during the summer of 2003. Listing subspecies in any CITES appendix is discouraged by Resolution Conf. 9.24 (Criteria for amendment of appendices I and II), unless the taxon in question is highly distinctive and use of the subspecies name would not lead to enforcement problems.

The United States will strive to obtain samples to complete genetic analysis on Black Sea bottlenose dolphins to help bolster the biological rationale for listing the population separately in appendix I. This issue notwithstanding, the other factors and criteria mentioned above suggest that the Black Sea bottlenose dolphin qualifies for uplisting to appendix I.

Props. 4 and 5. Prop. 4: Northern hemisphere minke whale (*Balaenoptera acutorostrata*)—Proposal for transfer from appendix I to appendix II (except the Yellow Sea, East China Sea, and Sea of Japan populations) with annotation. Prop. 5: Bryde's whale (*Balaenoptera edeni*)—Proposal for transfer from appendix I to appendix II of the western North Pacific population, with annotation. Both proposals submitted by Japan.

Tentative U.S. negotiating positions: Oppose.

Japan has proposed to downlist these populations of minke and Bryde's whales in accordance with Resolution Conf. 9.24, Annex 4. Japan has also submitted lengthy annotations for each downlisting, which would among other things: (1) restrict trade to International Whaling Commission (IWC) signatory governments that also have ''an effective DNA register system'' for whale products; (2) govern catch levels by using the International Whaling Commission Revised Management Procedure; (3) establish export quotas; and (4) require DNA profiles to accompany specimens in trade. The following discussion addresses both proposals.

The United States opposes the downlisting of these populations of whales, which are subject to IWC moratorium on commercial whaling. The United States continues to believe that it is inappropriate to consider these species for downlisting until the IWC completes its revised management scheme in order to implement a monitoring and inspection program for commercial whaling, as discussed below. The United States also believes that these species do not qualify for transfer to appendix II. The discussion that follows relates to all four of these proposals.

The United States believes that CITES should honor the request for assistance in enforcing the moratorium that the IWC communicated to the CITES Parties in a resolution passed at the Special Meeting of the IWC in Tokyo in December 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9 (''Trade in Certain Species and Stocks of Whales Protected by the International Whaling

Commission from Commercial Whaling''), which calls on the Parties to ''agree not to issue any import or export permit or certificate'' for introduction from the sea under CITES for primarily commercial purposes ''for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.'' Resolution Conf. 2.9 was overwhelmingly reaffirmed by the Parties at COP10, by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC Resolution IWC/51/43 also welcomes the CITES COP10 decision ''to uphold CITES Resolution Conf. 2.9.'' Support for these requests of the IWC necessitate opposition to any proposal to transfer whale stocks to appendix II.

Additionally, according to Resolution Conf. 9.24, Annex 4, Precautionary Measures, paragraph 2.B. a. ''[e]ven if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless * * * the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied * * * with (i) implementation by the range States of the requirements of the Convention, in particular Article IV; and (ii) appropriate enforcement controls and compliance with the requirements of the Convention.'' Unfortunately, these ''appropriate enforcement controls,'' as part of a Revised Management Scheme, have not yet been adopted by the IWC. Therefore, these whale stocks do not qualify for transfer to appendix II under Resolution Conf. 9.24.

The assumption in the downlisting proposal for these populations of minke and Bryde's whales is that there are discrete genetic differences within species and between individuals, and that species stocks and individuals can be readily differentiated by forensic DNA methods. The United States disagrees scientifically with the statement that the precautionary measures of Resolution Conf. 9.24 Annex 4 are fulfilled because DNA analysis techniques allow for the identification of whale stocks, and even individual whales. This is not the case, as the experts who have developed these methods will attest and the scientific literature reinforces. While clear markers differentiate species, finding forensic markers for all individuals within a population or stock is much more problematic. Doing so is usually possible only when the population distinctiveness approaches that of species. Thus, a DNA analysis would not distinguish between minke whales listed in appendix I and minke whales listed in appendix II. Appropriate safeguards to prevent trade in whales listed in appendix I would not exist, if some whales of that species could be traded under appendix II.

Moreover, the use of Japanese and Norwegian DNA registers that are not available for scrutiny by other whale DNA experts is counter to all principles of forensic identification. Only when there is agreement on DNA markers, tested against adequate sample sizes of the whale stocks in question, could they be utilized for verification purposes. This research may show significant evolutionary units within some stocks, and it may also show significant gene flow between stocks, thus, making forensic identification of meat samples to particular stocks impossible. Full transparency, accuracy, and availability of all DNA markers is essential to the IWC, and the United States does not believe these are available at this time. The lack of public scrutiny of Japanese and Norwegian DNA registries renders them an ineffective tool for monitoring whale catches.

The previous IWC management regime was not effective in managing the whaling industry. While it was in place, the whaling industry drastically depleted whale stocks until many became threatened with extinction. There has been illegal, unregulated, and unreported harvesting of whale stocks by certain IWC member nations. Since the establishment of the worldwide moratorium on commercial whaling, coupled with the CITES appendix-I listings, the Commission has continued to work on activities that the United States believes must be completed before commercial whaling can even be considered. This management regime must include devising an observation and monitoring program to ensure that quotas are not exceeded and whale products are legally obtained. Thus, the United States opposes even considering the downlisting of any whale species until the IWC has taken steps to create and institutionalize a revised management regime that brings all whaling under effective IWC monitoring and control.

Prop. 6. Maintain the Botswana population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by Botswana.

Tentative U.S. negotiating position: Undecided.

Botswana's African elephant population was transferred to appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Botswana has proposed to amend that annotation to allow for commercial trade in government-owned stocks of ivory to ''CITES-approved trading partners who will not re-export ivory,'' with a one-off quota of 20,000 kg of ivory and an annual quota of 4,000 kg of ivory. Other amendments to the annotation include allowing export of hides, leather goods, and ivory carvings. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of this trade, we remain very concerned about the potential effects a legal trade could have on poaching in other countries in Africa and Asia.

Prop. 7. Maintain the Namibian population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by Namibia.

Tentative U.S. negotiating position: Undecided.

Namibia's population of African elephants was transferred to appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Namibia has proposed to amend that annotation to allow for commercial trade in government-owned registered stocks of raw ivory (whole tusks and pieces), to ''trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from Namibia will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 (Rev.) concerning domestic manufacturing and trade,'' with a one-time export quota of 10,000 kg of ivory and an annual quota of 2,000 kg of ivory. The proposal also includes allowing trade in leather and ivory carvings for non-commercial purposes and trade in hides. We are continuing to evaluate this proposal, in the context of all proposals relevant to

the African elephant (12.6–12.11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of the ivory trade, we remain very concerned about the potential effects any legal trade could have on poaching in other countries in Africa and Asia.

Prop. 8. Maintain the South African population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by South Africa.

Tentative U.S. negotiating position: Undecided.

The South African population of African elephant was transferred from appendix I to appendix II in 1997, subject to Annotation 604. The latter allows for trade in live animals for reintroduction purposes, trade in hides and leather goods, non-commercial trade in hunting trophies, and a zero quota for government-owned raw ivory originating from Kruger National Park. This proposal allows for an initial sale of the Kruger National Park stockpile of ivory (30,000 kg of whole tusks and cut pieces) and a subsequent annual quota of two tons. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received at the time this notice was prepared, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of the ivory trade, we remain very concerned about the potential effects any legal trade could have on poaching in other countries in Africa and Asia.

Prop. 9. Downlist the Zambian population of the African elephant (*Loxodonta africana*) from appendix I to appendix II, with annotations for trade. Submitted by Zambia.

Tentative U.S. negotiating position: Undecided.

Zambia proposes to downlist its population of African elephant to appendix II with an annotation to permit trade in up to 17,000 kg of whole tusks owned by Zambia's Wildlife Authority and live sales under special circumstances. Revenue would be used for conservation purposes. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP 11.

Prop. 10. Maintain the Zimbabwe population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by Zimbabwe.

Tentative U.S. negotiating position: Undecided.

Zimbabwe's population of African elephant was transferred to appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Zimbabwe has proposed to amend that annotation to allow for commercial trade in stocks of raw ivory (whole tusks and pieces) ''to trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls,'' with a one-time export quota of 10,000 kg of ivory and an annual export quota of 5,000 kg of ivory. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received at the time this notice was prepared, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of the ivory trade, we remain very concerned about the potential effects any legal trade could have on poaching in other countries in Africa and Asia.

Prop. 11. Transfer to appendix I all populations of African elephant (*Loxodonta africana*) currently listed in appendix II. Submitted by India and Kenya.

Tentative U.S. negotiating position: Undecided.

We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). These issues are very complex. All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received at the time this notice was prepared, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. We note that this proposal has a wider scope of effect than the other proposals (see Proposals 6–11, above), since it would return all African elephant populations to appendix I and obviate any of the extant annotations. Since its adoption would make the other proposals (Proposals 6–10) moot, and it has a wider scope of effect, we note that the COP should discuss this one prior to discussing the other African elephant-related proposals.

Prop. 12. Transfer from appendix I to appendix II of the population of vicuna (*Vicugna vicugna*) of the Province of Catamarca, Argentina, for the exclusive purpose of allowing international trade in wool sheared from live animals, cloth, derived manufactured products, and other handicraft artifacts bearing the label ''VICUNA—ARGENTINA.'' Submitted by Argentina.

Tentative U.S. negotiating position: Support.

Although the United States has several concerns about this proposal, our tentative position is to support it. The United States has longstanding concerns about the so-called ''semi-captive'' management of vicuna in Argentina, and we are not particularly supportive of its proliferation. (Although the so-called ''semi-captive'' populations of Catamarca Province were downlisted at a previous COP, the CITES community has never seen an actual list of all such populations in Catamarca or elsewhere in Argentina for that matter. It may be the first instance where CITES actually agreed to downlist a taxon without a complete description of what was actually being down-listed.) This concern notwithstanding, we believe that the best way to counteract the proliferation of this management approach is to encourage the management of wild vicuna populations. This proposal does that. We are also concerned with the piecemeal approach that Argentina has taken in approaching down-listing of its vicuna populations. While this approach may be considered ''precautionary,'' it is in conflict with Annex 3 of Resolution Conf. 9.24 with regard to split-listings. There are

obvious enforcement problems associated with subnational split listings. We would encourage Argentina to pursue an approach and timetable that would allow the remainder of its national population to be down-listed at a future COP.

Prop. 13. Transfer to appendix II of the Bolivian populations of vicuna (*Vicugna vicugna*) in appendix I, in accordance with Article II, paragraph 2 (a), of the Convention, with the exclusive purpose of allowing international trade in products made from wool sheared from live animals and bearing the label ''VICUNA—BOLIVIA.'' Submitted by Bolivia.

Tentative U.S. negotiating position: Undecided.

The United States has several concerns about this proposal. We note that 73% of Bolivia's vicuna population occurs in areas that have already been downlisted to appendix II. There has been very little growth in the vicuna population of other management units. In fact, only one other area has had a clear population increase, based on data in Table 2 of the proposal. Only 15,500 vicunas occur outside these three units. We further note that Bolivia has not yet exported any cloth produced from vicuna, although this has been legal for more than two years. This is not an encouraging sign. Finally, we note that Bolivia has established a so-called ''semi-captive'' population for investigative purposes. In its proposal submitted to COP 11, Bolivia stated that it would only manage its vicuna as wild populations. We would like Bolivia to clarify its intention with regard to this ''semi-captive'' population. Finally, we have consistently received reports that poaching is a problem in Bolivia, and that poaching by Bolivian nationals is a problem in adjacent countries, especially Argentina and Chile. Our tentative position is that the proposal needs to be amended before it can be supported. Bolivia needs to establish a cautious national quota that emphasizes harvest from the three populations already in appendix II. Therefore, the U.S. negotiating position is currently undecided.

Prop. 14. Transfer from appendix I to appendix II of the population of vicuna (*Vicugna vicugna*) in the Primera Region of Chile through a modification of annotations −106 and + 211. Submitted by Chile.

Tentative U.S. negotiating position: Undecided.

The United States also has concerns about this proposal. As with the Argentinian proposal, we are concerned about so-called ''semi-captive'' management of vicuña, and we are not particularly supportive of its proliferation. The Chilean proposal does not adequately address how so-called ''semi-captive'' management will contribute to the conservation of wild vicuna populations in Chile. Without such an explanation, it is difficult to support this proposal. Therefore, the U.S. negotiating position is undecided at the time this notice was prepared.

Prop. 15. Transfer of the Chilean populations of lesser rhea (*Rhea pennata pennata = Pterocnemia pennata pennata*) from appendix I to appendix II. Submitted by Chile.

Tentative U.S. negotiating position: Support.

This subspecies is found in southern Chile and southern Argentina. Based on survey data conducted since 1996, Chile estimates that around 50,000 lesser rheas currently exist in the entire country. Density estimates have increased from 1.55 adults per square kilometer in 1997 to 5.13 in 2000. Illegal trade in the subspecies does not constitute a threat to the subspecies. Under the Chilean Hunting Law, the ownership, transport, and trade of any part, product, or specimen of lesser rhea is prohibited, unless it originates from an authorized breeding facility. If its proposal is adopted, Chile would allow trade only in lesser rhea specimens originating from captive-breeding operations registered with Chilean authorities. All captive-bred animals will be individually identified with microchips. Other subspecies of the rhea appear to be distinguishable through physical traits. Therefore, the United States believes that this species qualifies for transfer to appendix II according to Resolution Conf. 9.24, as well as the precautionary measures of Annex 4, B.2.b. Argentina, the only other range state, with over 1.6 million wild specimens of this subspecies and whose lesser rhea population was downlisted to appendix II at COP11, supports Chile's proposal.

Prop. 16. Transfer of the yellow-naped amazon (*Amazona auropalliata*) from appendix II to appendix I. Submitted by Costa Rica.

Tentative U.S. negotiating position: Undecided.

This species is considered threatened or endangered by its six range countries (Mexico, Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica). Whereas international trade of the species is legally prohibited in all range countries, except Nicaragua where it is under a quota system, wild populations continue to decline due to intense habitat loss, illegal international pet trade, and domestic use as a popular pet species. In some areas, wild populations have been completely extirpated. The United States seeks range country input and additional data on the status of wild populations and trade before reaching a decision on this proposal.

Prop. 17. Transfer of yellow-headed amazon (*Amazona oratrix*) from appendix II to appendix I. Submitted by Mexico.

Tentative U.S. negotiating position: Support.

This species is found in Belize, Guatemala, Honduras, and Mexico, with the largest segment of its range occurring along the southern coasts of Mexico. This species may number fewer than 7,000 birds and is considered endangered by IUCN. It may have declined by over 90% throughout its range since the 1970s. Over 70% of its subtropical habitat has been lost due to deforestation. Nestlings are usually captured for domestic and international trade, often resulting in the felling of trees that contain nest cavities. This species was the most confiscated parrot species between 1998 and 2000 at the U.S.-Mexican border. All of the range countries have either prohibited or restricted international trade. However, domestic and illegal trade of this popular pet species continues. Because its continued decline is linked to trade, and the proposal originates from the range country that contains the largest populations of this species, the United States supports this proposal. We also note that the United States has considered submitting a similar proposal in the past.

Prop. 18. Transfer of blue-headed macaw (*Ara couloni*) from appendix II to appendix I. Submitted by the Federal Republic of Germany on behalf of the Member States of the European Community.

Tentative U.S. negotiating position: Undecided.

The species is distributed in Peru, western Brazil, and north-western Bolivia. The last global population estimate was about 10,000 birds in 1990. More recent reports indicate that the species is local and erratic in occurrence, but locally common, and perhaps expanding its range. However, the species does have a low rate of reproduction, and an increase in legal and illegal trade throughout the range may be contributing to its decline. Habitat destruction is also a threat in Bolivia. Brazil is evaluating this species to determine whether or not it qualifies as endangered fauna and, thus, should receive strict national protection. It is not protected in Peru and Bolivia. There appears to be little population monitoring and management in the range countries. The Brazilian

Management and Scientific Authorities and the Bolivian Scientific Authority support this proposal. The Brazilian Management Authority is also a co-proponent. Because of the support of the range countries and the increase in commercial trade, the United States may support this proposal, but would like more information on the status of the species to determine whether it qualifies for Appendix I biologically.

Prop. 19. Transfer of the South African population of the Cape parrot (*Poicephalus robustus*) from appendix II to appendix I. Submitted by the Republic of South Africa.

Tentative U.S. negotiating position: Support.

The Cape parrot is locally distributed in the Eastern Cape, KwaZulu-Natal, and Limpopo provinces of South Africa. It is dependent on afromontane yellowwood forest for feeding, breeding, and nesting. Due to logging pressure, afromontane yellowwood forests have become fragmented, reduced, or eliminated. Lack of nesting sites and foraging opportunities have resulted in population declines. An annual census throughout the range identified only 396 birds in 2000 and 358 in 2001. The birds are also vulnerable to capture and shooting when natural food abundance is low and birds move into pecan orchards. Domestic trade for pets and traditional medicines is greater than international trade in this species; there is no legal international trade from South Africa. There is, however, some illegal trade due to the value of the species to collectors because of its rarity. Poaching for the illegal trade may be a greater risk to the remaining flocks in the short-term than habitat loss. Because the population of this species is small and fragmented, habitat loss and illegal trade threaten the survival of the species, and the range country has issued the proposal, the United States supports this proposal.

Props. 20–29, 31, and 32. Inclusion in appendix II of several species of Asian freshwater turtles: Prop. 20—*Platysternon megacephalum* (submitted by China and the United States); Prop. 21—*Annamemys annamensis* (submitted by China and Germany); Prop. 22—*Heosemys* spp. (submitted by China and Germany); Prop. 23—*Hieremys annandalii* (submitted by China and the United States); Prop. 24—*Kachuga* spp., except *K. tecta*, (submitted by India and the United States); Prop. 25—*Leucocephalon yuwonoi* (submitted by China and Germany); Prop. 26—*Mauremys mutica* (submitted by China and the United States); Prop. 27—*Orlitia borneensis* (submitted by China and Germany); Prop. 28—*Pyxidea mouhotii* (submitted by China and the United States); Prop. 29—*Siebenrockiella crassicollis* (submitted by China and the United States); Prop. 31—*Chitra* spp. (submitted by China and the United States); and Prop. 32—*Pelochelys* spp. (submitted by China and the United States).

In the **Federal Register** notice of April 18, 2002 (67 FR 19207), we indicated that we were considering proposals to list a number of Asian freshwater turtle and tortoise taxa in appendix I or II of CITES because of over-exploitation for the food and pet trades. We decided to defer a decision on these proposals until after a CITES-sponsored Workshop on Conservation of Freshwater Turtles and Tortoises, which was scheduled for March 25–28 in Kunming, China. The Workshop was held, and many Asian range countries attended. The consensus recommendation from the Workshop was that 11 turtle taxa are top priorities for CITES listings at COP 12: *Heosemys* spp., *Leucocephalon yuwonoi*, *Orlitia borneensis*, *Mauremys* (*Annamemys*) *annamensis*, *Kachuga* spp., *Playsternon megacephalum*, *Mauremys mutica*, *Chinemys* spp., *Chitra* spp., *Pyxidea mouhotii*, *Pelochelys* spp., and *Hieremys annandalii.* Of these, Germany submitted proposals for the first four taxa, and the United States submitted the remainder, with the exception of *Chinemys* spp. (instead, the United States submitted a proposal for *Siebenrockiella crassicollis*). China is a co-sponsor of both the German and U.S. proposals.

Prop. 30. Transfer of the population of hawksbill sea turtle (*Eretmochelys imbricata*) in Cuban waters from appendix I to appendix II, pursuant to Resolution Conf. 9.24, for the exclusive purpose of allowing the Government of Cuba to export its stockpile of shell plates (7,800 kg), accumulated legally from its national conservation and management program between 1993 and 2002, annotated as follows: (a) the export will not take place until the CITES Secretariat has verified, within 12 months of the decision, that the importing country has adequate internal trade controls and will not re-export and the CITES Standing Committee accepts this verification; and (b) the wild population in Cuban waters will continue to be managed as an appendix-I species. Submitted by Cuba.

According to the CITES web site, Cuba withdrew this proposal on August 19, 2002.

Prop. 33. Inclusion of the genera *Hoplodactylus* and *Naultinus* (New Zealand geckos) in appendix II. Submitted by New Zealand.

Proposed U.S. position: Support.

All gecko species are fully protected in New Zealand. They have been heavily impacted by human activity, including habitat modification and destruction, poaching, and most importantly, by introduced mammalian predators. Illegal trade in New Zealand geckos is occurring; the extent of which has yet to be fully known. This trade primarily supports the European and U.S. pet markets, where these species are in high demand and are fetching prices as high as $15,000 per individual. Recent information has shown that New Zealand gecko species are appearing on the international market at numbers far exceeding the breeding capacity of the captive population. Species are being advertised for sale for which there are no captive populations and no documented export from New Zealand. The ability of New Zealand gecko populations to recover is limited by their low reproductive potential. Even low levels of trade can have significant effects on wild populations. The species in these two genera satisfy the criteria of Annex II (2a and 2b) of Resolution Conf. 9.24. Within *Hoplodactylus* and *Naultinus,* identification to species level can be very difficult. However, the genera are distinct from other geckos and each other.

Prop. 34. Deletion of the orange-throated whiptail lizard (*Cnemidophorus hyperythrus*) from appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207). The United States will actively work towards adoption of this proposal at COP 12.

Prop. 35. Inclusion of the whale shark (*Rhincodon typus*) in appendix II. Submitted by India and The Philippines.

Tentative U.S. negotiating position: Support.

The whale shark is the largest fish and is a sluggish pelagic filter feeder often seen swimming on the surface. It occurs in tropical and subtropical waters worldwide. The United States unsuccessfully proposed the species for inclusion in appendix II at COP11. The primary threat to the species is directed commercial harvest, exacerbated by a vulnerable life history. Harvest is facilitated by seasonal aggregations in known areas and driven by a lucrative international market for fins and meat. Population size is unknown, but the species is considered to be rare. Local seasonal populations and catch per unit

effort have apparently declined drastically in some places, whereas fishing effort and price have increased. It is not known to what degree fishing in one area affects populations in other areas, although the fact that at least some of the sharks migrate long distances within ocean basins suggests that the effects may not be purely local. The proponents believe the species meets the criteria for appendix II as shown in Resolution Conf. 9.24, Annex 2a, B(i).

Whale sharks are currently protected in Australia, the Maldives, Honduras, Malaysia, the U.S. Atlantic coast and Gulf of Mexico, India, South Africa, and the Phillippines, leaving Taiwan as the only jurisdiction with a significant legal commercial fishery. Illegal trade may be growing and compromises the domestic protection mentioned above. In our April 18, 2002, **Federal Register** (67 FR 19207) notice, we expressed concern that only limited data were available on trade volumes and the impact of remaining fisheries. However, the proponents have provided additional trade and harvest data, and preliminary analysis suggests that the proposal is defensible.

Prop. 36. Inclusion of the basking shark (*Cetorhinus maximus*) in appendix II. Submitted by the United Kingdom on behalf of the member States of the European Community.

Tentative U.S. negotiating position: Support.

The basking shark is widely distributed in coastal waters and on the continental shelves of temperate zones in the Northern and Southern Hemispheres. The species is currently listed in appendix III (fins and whole carcasses) by the United Kingdom. The main threat to basking shark populations is from fishing operations, both targeted on basking sharks and through incidental or by-catch in other fisheries. The biology of the species makes it especially vulnerable to exploitation: it has a slow growth rate, a long time to sexual maturity (ca. 12–20 years), a long gestation period (1–3 years) and a similar interval between pregnancies, low fecundity (the only recorded litter was of just six very large pups), and probable small populations. There are a few well-documented fisheries for *C. maximus* (especially from the Northeastern Atlantic), and these suggest stock reductions of 50–90 percent over short periods (typically a few decades or less). These declines have persisted into the long term, with no apparent recovery several decades after exploitation has ceased. Other data, based on sightings and less well-recorded fisheries, suggest similar declines. The proponents state that this species meets the criteria listed in Resolution Conf. 9.24, Annex 2a, (B)(i).

In our April 18, 2002, **Federal Register** (67 FR 19207) notice, we noted increasing demand for basking shark fins in international trade. Given the convincing biological data, excellent identification manuals, and trade documentation provided by the proponents, the United States intends to support this proposal at COP12.

Prop. 37. Inclusion of seahorses (*Hippocampus* spp.) in appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 38. Inclusion of humphead wrasse (*Cheilinus undulatus*) in appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 39. Inclusion of the Patagonian and Antarctic toothfishes (*Dissostichus eleginoides* and *D. mawsoni*) in appendix II. Submitted by Australia.

Tentative U.S. negotiating position: Undecided.

The Patagonian toothfish (*Dissostichus eleginoides*) is the largest finfish with any economic importance inhabiting the Southern Ocean. The Antarctic toothfish (*D. mawsoni*) is a similar-looking species that partially overlaps the range of the Patagonian toothfish, and is occasionally harvested in conjunction with the latter species. Toothfish have been fished commercially for about 20 years, and management of the species is under the competence of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). There are several characteristics of the life history of *D. eleginoides* that make the species vulnerable to over-exploitation. The production of large yolky eggs implies that fecundity of Patagonian toothfish is comparatively low. In addition, *D. eleginoides* matures at a relatively late age, with age at first spawning from 8–10 years of age. The species is relatively slow growing and long lived, likely surviving to a minimum of 40–50 years old. In our April 18, 2002, **Federal Register** notice (67 FR 19207), we provided the latest harvest and trade data for toothfish, and restated our concerns about suspected high levels of illegal, unreported, or misreported landings.

Given the available biological information, trade data, and regulatory regimes in CCAMLR, the proponents state that *Dissostichus eleginoides* (Patagonian toothfish) qualifies for listing in appendix II as per Resolution Conf. 9.24: it is known that the accumulated harvesting from the wild of this species for international trade (by illegal, unregulated, and unreported fishing operations) has a detrimental impact on the species due to these activities, thus making the annual harvest continually exceed the level that can be continued in perpetuity. Australia proposes listing of the Antarctic toothfish (*Dissostichus mawsoni*) in appendix II in accordance with Article II 2(b) (*i.e.*, due to similarity of appearance) because the species resembles *D. eleginoides* so closely that a non-expert with reasonable effort is unlikely to be able to distinguish between them.

CCAMLR adopted a conservation measure to track and monitor trade in *Dissostichus* spp. (Patagonian and Antarctic toothfish), known as the Catch Documentation Scheme (CDS), which became effective in May 2000, but has been implemented slowly. Since then, the United States and other countries have worked to improve the efficiency and coverage of the CDS among CCAMLR parties and non-Parties. Details of this work can be found in our April 18, 2002, **Federal Register** notice (67 FR 19207) on COP12. In conjunction with the current listing proposal, Australia has offered a discussion paper on how the CDS and CITES permitting regimes may work together to monitor the international toothfish trade while minimizing duplicative paperwork (see section 44, above).

The United States has seized 5 shipments of illegally caught toothfish since the summer of 2001, most recently in May 2002 with assistance from Australia. Given such successes under CCAMLR's regime and continuing improvements to its CDS system, the United States sees CCAMLR as a viable management institution for toothfish. However, the proponents describe innovative approaches to synchronizing CITES and CCAMLR documents, minimizing industry burdens under a listing, and expanding the coverage of CCAMLR's management regime. These warrant serious consideration. As in the case of all proposals concerning trade in *Dissostichus* spp., in order to determine a position on Australia's proposal, U.S. government agencies will evaluate the many complex aspects of this international trade and how CITES might be useful as an adjunct to traditional fisheries management. This

includes how our position would affect or be affected by the proposed cooperation with the United Nations Food and Agriculture Organization (FAO) regarding international trade in marine fish species. At this time, the United States is undecided as to our positions on issues related to CITES's role in international toothfish trade.

Props. 40 and 41. Prop. 40—Inclusion of the butterflies *Atrophaneura jophon* and *A. pandiyana* in appendix II (the latter included due to similarity of appearance with the former species); Prop. 41—Inclusion of the butterflies *Papilio aristophontesis*, *P. nireus*, and *P. sosia* in appendix II (the latter two included due to similarity of appearance with the former species). Both proposals submitted by Germany on behalf of the member states of the European Community.

Tentative U.S. negotiating position: Support.

Atrophaneura jophon is a swallowtail butterfly known only from the rain forests in south-western Sri Lanka. It is classified as critically endangered by the IUCN due to its extremely limited extent of occurrence and a decline in habitat availability. *Papilio aristophontesis* is a forest species endemic to the Comoros Islands and is classified as endangered by the IUCN due to a decline in habitat availability. A few specimens of both *A. jophon* and *P. aristophontesis* have been offered for sale at insect trade fairs in Central Europe. Whereas small-scale collection is not normally harmful to butterfly populations, for those already threatened by habitat loss even small amounts of collecting by individuals may cause harm and commercial collecting even greater harm still. Species that are demonstrably rare tend to be desirable and command high prices. With the apparent rarity of *A. jophon* and *P. aristophontesis*, existing small-scale trade is possibly unsustainable. Sri Lanka strongly supports the proposal for *A. jophon* and *A. pandiyana*.

Prop. 42. Inclusion of the entire species *Araucaria araucana* in appendix I, replacing the annotation limiting the appendix-I listing to the populations of Argentina and Chile, and eliminating the annotation to include all other populations in appendix II. Submitted by Argentina.

Tentative U.S. negotiating position: Support.

At COP11, Argentina had submitted a similar proposal, in which they had proposed to transfer the Argentine population of *Araucaria araucana* from appendix II to appendix I. This species has a restricted range and is highly threatened in Argentina. Over-collection of seeds is a serious threat to wild populations; inclusion of the species in appendix I assists in regulating trade in seeds. Because Chile's population was already included in appendix I, transfer of the Argentine population to appendix I was intended to provide greater protection to Argentina's population of this species, to harmonize trade controls for the species, and to eliminate the possibility of having appendix-I seed of the species traded as appendix-II. Placing the entire species in appendix I, which was the intent of Argentina, would have also conformed to the recommendation of Resolution Conf. 9.24, which states that split-listings should be avoided wherever possible. Argentina's proposal on *Araucaria araucana* was adopted at COP11.

Following COP11, the CITES Secretariat advised the Parties that the wording of Argentina's proposal only transferred the Argentine population of *Araucaria araucana* to appendix I, but that populations outside of Argentina and Chile remained listed in appendix II. This is contrary to the intent of Argentina, which was to include the entire species in appendix I. Based on discussions conducted in the Plants Committee at its tenth meeting in Shepherdstown (December 11–15, 2000), it was clear that the Chairman and members of the Plants Committee, as well as other Parties, also believed that was the purpose of the proposal. Subsequently, Argentina prepared another proposal to be submitted to the Parties for a vote by postal procedures, which was done in CITES Notification to the Parties No. 2001/080 (December 21, 2001). However, this proposal failed due to a failure of the minimum number of Parties to vote.

Argentina has submitted the current proposal for consideration at COP12 to redress the difficulties with getting the entire species included in appendix I. The United States is concerned about any interpretation of a listing that would consider populations outside of the range countries as separately listed entities, unless specifically considered and designated as such by the Conference of the Parties. An interpretation of the appendices to allow for separate treatment of populations outside of range countries undermines the basic intent of the Convention, which is to control global trade in listed species as a means of conserving wild populations in their range countries. We have discussed this issue with other Parties and believe it is universally understood that, unless otherwise specified by the Conference of the Parties, all populations worldwide are considered to conform to the listing status of the populations of the range countries. Therefore, in addition to supporting this proposal from Argentina, the United States proposes to include this issue in further discussions of the listing criteria and the possible revision of Resolution Conf. 9.24.

Prop. 43. Amend annotation 608 to include all *Cactaceae* lacking chlorophyll and grafted on *Harrisia* ''Jusbertii,'' *Hylocereus trigonus*, or *Hylocereus undatus*. Submitted by Switzerland.

Tentative U.S. negotiating position: Support.

This proposal expands the current exemption under annotation 608 for grafted cacti. The three grafting stock species remain unchanged, but the grafted species have now been expanded to include all cacti, but only if they are specimens (cultivars) lacking in chlorophyll. We believe the rationale provided in the proposal provides a sound basis to support this proposal, since the types of specimens that would be exempted are not relevant to the conservation of the species from which they are derived. We understand that the current exemption contained in annotation 608 presents some difficulties in implementation, since the trade in grafted cacti usually involves mixtures of specimens, some covered by the exemption and some that are not. It is also our sense that some foreign enforcement officials may already treat all grafted cacti as exempt in practice, since they occur as mixed shipments, represent a negligible conservation risk, and are difficult to distinguish in large shipments.

Prop. 44. Delisting from appendix II of prickly pear cacti: *Cactaceae,* Subfamily *Opuntiodeae* (all species). Submitted by Switzerland.

Tentative U.S. negotiating position: Oppose.

In this proposal, Switzerland proposes to delete opuntioid cacti from CITES appendix II. The United States has advised Switzerland, in writing and orally at the twelfth meeting of the Plants Committee (Leiden, The Netherlands, May 2002), that we are opposed to the delisting of these species at this time because of the documented illegal trade in *Opuntia* species between the United States and Mexico, and because the United States is a range country for over 80 species of Opuntia, with one species listed as endangered under the Endangered Species Act. In its comments to Switzerland, the United States provided data on the extent of known illegal trade in these species, as evidenced through seizures. It is reasonable to assume that the actual level of illegal trade exceeds this

amount, since actual documented illegal trade is generally believed to be a fraction of the total illegal trade.

The Swiss proposal recognizes that Chile, Mexico, and the United States all have species classified as rare or endangered (12 species in all). However, Switzerland attempts to negate the value of these classifications on taxonomic grounds, some of which are valid, although we believe that the questionable status of some of these species is grounds for being cautious until their actual status is resolved. The proposal also questions whether we should be concerned about the documented trade, because it is not documented to the species level, and therefore we cannot determine that rare species are actually being affected. Again, we believe this is reason for maintaining these species in the appendices until we can be certain that rare species are not being affected by collection for trade, rather than assuming that they are not.

Prop. 45. Delisting from appendix II of leaf-bearing cacti (Cactaceae): Subfamily Pereskioideae (all species in the genera *Pereskia* and *Maihuenia*) and two genera in the subfamily Opuntioideae (all species in the genera *Pereskiopsis* and *Qiabentia*). Submitted by Switzerland.

Tentative U.S. negotiating position: Undecided.

Like the previous proposal, this was submitted to the Plants Committee for its consideration at its twelfth meeting. Although we had voiced our opposition to this proposal at that meeting, we are reconsidering our position, and may remain undecided until COP12, where we will base our final decision on any additional information provided to us and the comments of the range countries. We will also be consulting with range countries in the interim, particularly Mexico. The United States is not a range country for these genera. However, two species in the genus *Pereskia (P. aculeata*, and *P. grandifolia*) have naturalized in Florida and Texas. We have observed only limited trade in the four genera covered by the proposal. However, we are uncertain as to what information range countries may have on trade impacts on their species.

Props. 46 and 47. Transfer of *Sclerocactus nyensis* and *S. spinosior* spp. *blaneii* from appendix II to appendix I. Submitted by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207). The United States will actively work for adoption of this proposal at COP 12.

Prop. 48. Transfer of the Santa Barbara Island dudleya (*Dudleya traskiae*) from appendix I to appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 49. Transfer of *Aloe thorncroftii* from appendix I to appendix II. Submitted by the Republic of South Africa.

Tentative U.S. negotiating position: Support.

Aloe thorncroftii is restricted in its distribution to the mountains of the Barbeton and Carolina districts in Mpumalanga Province, South Africa. The species grows predominantly on rocky outcrops in a grassland vegetation type known as Mountain Sourveld. Satellite images show that 48 percent of this habitat type has been converted to commercial forestry. Invasion by nonnative plant species is also a threat to the habitat of this plant. The total survey population for this taxon was 7,906 plants in 2000.

According to a TRAFFIC analysis of CITES trade data, there was no trade in *A. thorncroftii* between 1981 and 1995, and there is no recent evidence of legal international trade in this species. Additionally, there is no evidence of illegal trade in this species. Given the small amount of horticultural interest in this species, it is considered highly unlikely that the proposed amendment will affect demand levels for this species. According to the proposal, it is much easier and cheaper to grow *A. thorncroftii* from seed than to collect plants from the wild.

Prop. 50. Inclusion in appendix II of the neotropical populations of bigleaf mahogany (*Swietenia macrophylla*), including logs, sawn timber, veneer, and plywood. Submitted by Guatemala and Nicaragua.

Tentative U.S. negotiating position: Undecided.

The proponents state that they are proposing this amendment to the appendices in accordance with Article II, paragraph 2.(a) of the Convention and Resolution Conf. 9.24, Annex 2a, which states that the harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by *either:* (i) exceeding, over an extended period, the level that can be continued in perpetuity; or (ii) reducing it to a population level at which its survival would be threatened by other influences. They further state that the purpose of the proposal is to promote sustainable management of *S. macrophylla* in order to help ensure its further conservation and trade.

Bigleaf mahogany is currently listed in appendix III by several range countries, in the Americas only: by Costa Rica in November 1995 (including its saw-logs, sawn wood, and veneer sheets, although other derivatives such as furniture are exempt from CITES requirements); by Bolivia in March 1998; by Brazil in July 1998; by Mexico in April 1999; by Peru in June 2001; and by Colombia in October 2001. Species listed in appendix III can be traded commercially. Once a species is added to appendix III, the countries that list the species are required to issue permits and ensure that specimens are legally acquired; non-listing range countries must issue certificates of origin; and importing countries are required to ensure that all shipments are accompanied by the appropriate CITES documents. The issuance of appendix-III documentation is dependent on legal findings and does not include biological determinations for export.

Proposals to include this species in CITES appendix II were submitted at COP8 and COP10 with the United States as a co-sponsor with Costa Rica and Bolivia, respectively, and at COP9 by the Netherlands. In our April 18, 2002, **Federal Register** notice (67 FR 19207), we indicated that we did not plan to submit a proposal for this species, although we had received a recommendation to do so. This decision was taken after extensive discussion within the U.S. government, and in light of the previously unsuccessful efforts to list the species in appendix II. We would therefore be interested in comments regarding the usefulness of including bigleaf mahogany in appendix II, especially with respect to any advantages that might be gained beyond the current listing of the species in appendix III.

Prop. 51. Annotation of Orchidaceae in appendix II to exempt the artificially propagated hybrids of six genera under certain conditions. Submitted by the United States.

Tentative U.S. position: Support.

As described in our April 18, 2002, **Federal Register** notice, our Division of Scientific Authority and the American Orchid Society prepared a draft proposal for consideration by the Plants Committee at its twelfth meeting in May 2002. This proposal is for the annotation of the listing of orchids in appendix II to exempt the artificially propagated hybrids of six genera: *Cattleya, Cymbidium, Dendrobium, Oncidium, Phalaenopsis,* and *Vanda*. The proposed annotation provides clear restrictions on this exemption so that it applies only to

large-volume commercial shipments that are highly uniform and otherwise characteristic of artificially propagated specimens. Exempted shipments also may not contain a mixture of genera, or even different hybrids, within a container. This proposal received strong support from the Plants Committee, as well as from other countries that attended the meeting, and the United States was asked to submit the proposal for COP12.

Prop. 52. Deletion of the annotation to the desert-living cistanche (*Cistanche deserticola*) in appendix II. Submitted by China.

Tentative U.S. negotiating position: Support.

At COP11, the Parties adopted a proposal from China to include the desert-living cistanche (*Cistanche deserticola*) in CITES appendix II with the annotation ''designates whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas and confectionary.'' However, after COP11 it was discovered that the reference to roots in the annotation was incorrect because *C. deserticola* is a parasitic plant and does not have roots. The parts of the plant that are traded are the stems, which are harvested either subterranean or above ground. The proposal is to delete the current annotation for the listed species.

Prop. 53. Deletion of Maguire's bitter-root (*Lewisia maguirei*). Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 54. Inclusion of *Guaiacum* spp. in appendix II, with annotation designating all parts and derivatives, including wood, bark and extract. Submitted by Germany on behalf of the member states of the European Community.

Tentative U.S. negotiating position: Support.

The genus *Guaiacum* consists of 4–6 different species of New World evergreen trees and shrubs distributed throughout Mesoamerica and the Caribbean. The current taxonomy of the different *Guaiacum* species is still not unanimously accepted. However, the following species are discussed in the proposal: *G. angustifolium, G. coulteri, G. guatemalense, G. officinale, G. sanctum,* and *G. unijugum. G. coulteri* is most likely endemic to Mexico.

Guaiacum sanctum and *G. officinale,* which are internationally traded for their wood and medicinal resin, are already listed in appendix II of CITES. The remaining species of *Guaiacum* are not regulated by CITES. *Guaiacum sanctum* (timber only) was listed in appendix II in 1975. In 1985, an annotation (#1) was added to the listing of *G. sanctum.* In 2000, the species was proposed to be transferred from appendix II to appendix I at COP11. However, the proposal was later withdrawn. Since 2001, the Mexican CITES Authorities have significantly reduced exports of *G. sanctum* from Mexico. At PC12 (Leiden, The Netherlands, May 13–17, 2002) the Mexico announced that an export quota for *G. sanctum* would be established in due course.

There is no detailed species population information available. With the existing CITES trade controls for both *G. sanctum* and *G. officinale,* collection and export of *G. coulteri* may be expanding and thus its population decreasing. International trade data are usually only listed as ''lignum-vitae'' and usually do not distinguish among *Guaiacum* species. *G. sanctum* and *G. coulteri* look very similar in the wild and cannot be readily and clearly distinguished by non-experts. However, information on the ranges of the various species indicates that a control system could be instituted whereby species could be identified by their origin and tracked in trade. *Guaiacum coulteri* does have special legal protection in Mexico, and permission is required to harvest, use, possess, or export this species. Despite insufficient identification of *Guaiacum* species exported from Mexico, most exports from Mexico to the United States are likely to be *G. coulteri* or *G. sanctum.* The proposed listing of the remaining taxa of *Guaiacum* is supported by the Mexican authorities and would eliminate such problems as deliberate mislabeling of wood to avoid CITES permit controls.

Conclusion of the Meeting

67. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties (no document)

The Secretariat does not normally circulate a document on the time and venue of the next regular meeting of the COP. We anticipate receiving information on this at COP12, at which time we will develop a negotiating position. The United States favors holding COP13 in a country where all Parties and observers will be admitted without political difficulties. The United States normally supports holding meetings of the COP on a biennial basis, or, as in the case of COPs 10, 11, and 12, after an interval of approximately 2½ years.

68. Closing remarks (no document)

Future Actions

Before COP12, we will announce any changes to the tentative negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (*http://international.fws.gov/*). After the meeting of the COP, we will publish a notice announcing the amendments to CITES appendices I and II and resolutions and decisions that were adopted by the Parties at the meeting, and requesting comments on whether the United States should enter reservations on any of the amendments to the appendices.

Reminder of Extension of Comment Period

We remind you that with this notice we have extended the comment period on tentative U.S. negotiating positions on species proposals, proposed resolutions and decisions, and agenda items submitted by other Parties and the CITES Secretariat for consideration at COP12 through October 31, 2002.

Dated: October 23, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27682 Filed 10–30–02; 8:45 am]

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Federal Register

Thursday,
October 31, 2002

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926
Standards Improvement Project-Phase II; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. S–778–A]

RIN 1218–AB 81

Standards Improvement Project-Phase II

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; request for comment.

SUMMARY: The Occupational Safety and Health Administration (''OSHA'' or ''the Agency'') is continuing to remove and revise provisions of its standards that are outdated, duplicative, unnecessary, or inconsistent. The Agency completed the first phase of this process with the publication of a final rule in the **Federal Register** in June 1998. In this second phase, OSHA is proposing to revise a number of health provisions in its standards for general industry, shipyard employment, and construction. The Agency believes that the proposed revisions would streamline these provisions; in some cases, OSHA is making substantive revisions to provisions that would reduce regulatory requirements for employers while maintaining employee protection.

DATES: Submit written comments and any request for a hearing by December 30, 2002.

ADDRESSES: Submit three copies of written comments to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2350). Commenters may transmit written comments of 10 pages or less by fax to the Docket Office at (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at *http://www.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

Send requests for a hearing to Ms. Veneta Chatmon, Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). Submit comments on the reduction of paperwork burden described in section VII of this notice to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20530 (Attention: OSHA Desk Officer).

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, Director, OSHA Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). For technical inquiries, contact Mr. Robert Manware, Office of Physical Hazards, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2299; fax: (202) 693–1678). For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210 (telephone: (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, the Agency identified a number of provisions in its regulations and standards that were inconsistent, duplicative, outdated, or in need of being rewritten in plain language. In 1998, as part of the process of correcting such provisions, OSHA made several substantive revisions to its health and safety standards that reduced the regulatory obligations of employers while maintaining the safety and health protection afforded to employees (63 FR 33450, June 18, 1998). During and after this rulemaking, the Agency identified several other regulatory provisions in its safety and health standards involving notification of use, frequency of exposure monitoring and medical surveillance, and similar provisions that it believes are unnecessary or ineffective in protecting employee safety and health. Today, OSHA is proposing to make substantive revisions to a number of the health standard provisions identified in this process.

The Agency plans to propose similar revisions to several of its safety and other standards in a future Federal Register notice. In addition, OSHA requests comments on possible similar revisions to outdated provisions in safety or health standards which could be included in the next or subsequent Standards Improvement proposal.

The Agency has made a preliminary finding that the revisions to the health standards proposed herein would reduce the regulatory burden of employers without reducing the health protection that these standards currently provide to employees. OSHA also believes that the changes set forth in this proposal would simplify and clarify the requirements of these provisions, thereby facilitating employer compliance, improving employee protection and reducing paperwork.

This notice-and-comment rulemaking is necessary because a number of the proposed revisions are substantive. The Agency will base its final decisions regarding these proposed revisions on the record developed in this rulemaking through public comment.

This action will affect a number of standards included in Parts 1926 and 1915. In accordance with Agency procedures therefore, the Advisory Committee on Construction Safety and Health, and the Advisory Committee on Maritime Safety and Health have been advised of the standards which affect the construction and maritime industries. This information was presented to the Construction Committee at their meeting in Washington, DC, on September 2, 2000, and to the Maritime Committee on December 6, 2000, in Baltimore, Maryland.

II. Summary and Explanation

The proposed revisions address: Methods of communicating illness outbreaks (temporary labor camps standard (§ 1910.142)); first-aid kits for the general industry (standards for medical services and first aid (§ 1910.151) and telecommunications (§ 1910.268)); laboratory licensing (vinyl chloride standard (§ 1910.1017); periodic exposure monitoring (vinyl chloride, 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044), and acrylonitrile (§ 1910.1045) standards); reporting the use of alternative control methods (asbestos standards for shipyards and construction (§§ 1915.1001 and 1926.1101, respectively)); evaluating chest x-rays (inorganic arsenic and coke oven emissions standards (§§ 1910.1018 and 1910.1029, respectively)); signing medical opinions (asbestos standards for general industry and the cadmium standards for general industry and construction (§§ 1910.1027 and 1926.1127, respectively)); and semiannual medical examinations

(vinyl chloride, inorganic arsenic, and coke oven emissions standards).

Also included in the proposed revisions are requirements to notify OSHA of certain events (13 carcinogens (§ 1910.1003), vinyl chloride, inorganic arsenic, DBCP, and acrylonitrile standards); semiannual updating of compliance plans (vinyl chloride, inorganic arsenic, lead for general industry and construction (§§ 1910.1025 and 1926.62, respectively), DBCP, and acrylonitrile standards); and employee-notification requirements in general-industry standards (asbestos, vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust (§ 1910.1043), DBCP, acrylonitrile, ethylene oxide (§ 1910.1047), formaldehyde (§ 1910.1048), methylenedianiline (§ 1910.1050), butadiene (§ 1910.1051), and methylene chloride (§ 1910.1052)), and construction standards (methylenedianiline (§ 1910.1051), and methylene chloride (§ 1910.1052)), and construction standards (methylenedianiline (§ 1926.60), lead, asbestos, and cadmium). The Agency is also seeking comment on the need to include social security numbers in the exposure-monitoring and medical-surveillance records required by a number of its substance-specific standards.

The Agency emphasizes that the scope of this rulemaking is limited to revising provisions that are outdated, duplicative, unnecessary, or inconsistent with the provisions in other standards. In regard to the last item, the Agency is specifically proposing to revise a number of OSHA's older standards (vinyl chloride, acrylonitrile, coke ovens, arsenic, DBCP) to be consistent with the frequencies of exposure monitoring, medical surveillance, and compliance plan updates that are required in the majority of more recently promulgated rules. Comment is being solicited on whether it is appropriate to revise these older standards to be consistent with the newer standards. The scope of the rulemaking does not include a review of the appropriateness of the frequencies in exposure monitoring, medical surveillance, and compliance plan updating that is required by the newer standards.

It should be noted that certain sections in 29 CFR part 1910 that are being addressed in this document are incorporated by reference in 29 CFR parts 1915 and 1926. Thus, changes to those sections in part 1910 will also apply to parts 1915 and 1926.

A. Temporary Labor Camps (§ 1910.142)

Paragraph (1)(2) of this standard requires camp superintendents to report immediately to local health authorities ''by telegram or telephone'' the outbreak of specific illnesses and medical conditions among employees. OSHA believes that the requirement to use a telegram or telephone to notify health authorities is too restrictive in this age of computers and the internet, and that other forms of communication should be permitted for this purpose. Thus, the Agency is proposing to delete the requirement to use a telegram or telephone for notification. However, OSHA is retaining the requirement that camp superintendents immediately notify local health authorities of the outbreak of any of the illnesses or medical conditions specified by this provision.

B. Reference to First-Aid Supplies in Appendix A to the Standard on Medical Services and First Aid (§ 1910.151)

Paragraph (b) § 1910.151, the Agency's standard regulating medical services and first-aid supplies, requires employers to ensure that ''[a]dequate first aid supplies shall be readily available [at the workplace].'' To assist employers in meeting this requirement, OSHA added a nonmandatory appendix to this standard. (63 FR 33450, June 18, 1998). This appendix refers to the American National Standards Institute (ANSI) consensus standard (ANSI Z308.1–1978, ''Minimum requirements for industrial unit-type first aid kits'', referred to hereafter as the ''1978 edition''), which specifies basic first-aid supplies for the workplace. The Agency believes that this appendix provides employers with helpful information they can use in selecting first-aid supplies and containers that are appropriate to the medical emergencies and environmental conditions that they may encounter in their workplaces. In discussing the addition of Appendix A to this standard, OSHA noted that ANSI was developing a new edition of this consensus standard (63 FR 33461). The Agency then stated that, once ANSI completed this project, it would propose revising Appendix A to reference the new edition. However, OSHA stated that it would propose such a revision only if it had first determined that ''the new edition is as effective [in protecting employees] as the earlier edition,'' and that it would also ''consider adding other consensus standards on first aid kits as references to the Appendix.''

ANSI subsequently completed the new edition of the consensus standard and published it as ANZI Z308.1–1998 (''Minimum requirements for workplace first aid kits'', referred to hereafter as ''the 1998 edition''). In reviewing the 1998 edition, the Agency found that:

- Regarding container requirements, the 1998 edition permits more compliance flexibility than the 1978 edition. For example, the 1998 edition identifies three types of first-aid containers, types I, II, and III, designed for stationary indoor use, mobile indoor use, and mobile outdoor use, respectively, while the 1978 edition includes only two types of containers, (standard and special purpose, with special-purpose containers designed for use under extreme conditions such as example, corrosive, nonsparking, nonmagnetic, or dielectric conditions.
- Requirements for the three types of containers identified in the 1998 edition are performance based, while the 1978 edition provides extensive specifications for each type of container.
- Unlike the 1978 edition, the conditioning and drop-test procedures described in the 1998 edition for types II and III containers, and the procedures for testing type III containers for corrosion and moisture resistance, specify the minimum number of containers required for testing.
- The 1998 edition specifies that each type III container subjected to drop testing must also undergo corrosion and moisture-resistance testing to ensure the structural integrity of the container under severe moisture conditions. The 1978 edition appears to allow testing of different special-purpose containers under the drop- and moisture-testing conditions.
- Corrosion and moisture-resistance testing of type III containers under the 1998 edition requires exposure of the containers to simulated salt spray for 20 days in accordance with the provisions of American Society for Testing and Materials (ASTM) consensus standard B117 (''Operating salt spray (fog) operations''). The 1978 edition only requires exposure of a special-purpose container to fresh water for 15 minutes.
- Regarding the content (fill items) of the containers, the 1998 edition provides a short list of basic items needed to disinfect and cover wounds, including special items for treating burns. However, the 1998 edition lists optional fill items for use if an employer identifies workplace hazards that may inflict injuries not covered by the basic fill items. The 1978 edition has a single list of fill items, some of which are unnecessary for many emergencies (for example, forceps, metal splints, tourniquets). Additionally, the 1978 edition is missing several important

items (for example, medical-examination gloves, cold packs).

• The 1998 edition requires color coding of unit packages that contain specific types of fill items (for example, yellow for bandages, blue for antiseptics), while the 1978 edition has no such requirement.

• The 1998 edition, more often than the 1978 edition, identifies fill items according to standardized testing and quality-control methods. For example, the 1998 edition requires that absorbent compresses meet the water-absorbency criteria of ASTM consensus standard D117 (''Nonwoven fabrics''), and that antiseptics conform to the requirements specified by the Food and Drug Administration in 21 CFR part 333 (''Topical antimicrobial drug products for over-the-counter human use''). The 1978 edition provides no absorbency criteria for absorbent gauze compresses, while the antiseptic solution used for antiseptic swabs is required only to be ''acceptable to the consulting physician.''

The Agency's review of the two editions demonstrates that, compared with the 1978 edition, the 1998 edition: Increases compliance flexibility by emphasizing performance-based requirements, including a choice of three containers and a list of basic and optional fill items; improves the procedures for conditioning and testing first-aid containers; and ensures the reliability and efficacy of the fill items by basing the selection of these items on standardized testing and quality-control methods. Based on this review, OSHA preliminarily finds that the provisions of the 1998 edition would provide employers with the information they need to select first-aid containers and fill items appropriate to the hazards in their workplaces that could injure employees. Accordingly, the 1998 edition would protect employees at least as well as the requirements of the 1978 edition. Thus, the Agency is proposing to replace the reference to the 1978 edition in appendix A of § 1910.151 with a reference to the 1998 edition. This revision would not impose any additional cost on employers because appendix A is nonmandatory.

OSHA welcomes comment on the extent to which the newer editions of the ANSI Z308.1 consensus standard would provide equivalent or better protection to employees. The Agency would also appreciate receiving information on the availability of other consensus standards and guidelines for first-aid kits. Responses to this request for information should include, if possible, a detailed description of these consensus standards and guidelines, as well as a rationale for including them in the proposed revision to appendix A of § 1910.151.

C. First-aid Supplies in the Telecommunications Standard (§ 1910.268)

Paragraph (b)(3) of OSHA's telecommunication standard (§ 1910.268) requires an employer to: Provide first-aid supplies (fill items) recommended by a consulting physician; ensure that the fill items are readily accessible and housed in weatherproof containers if used outdoors; and inspect the fill items at least once a month and replace expended items. With this rulemaking, the Agency is proposing to revise paragraph (b)(3) to read, ''Employers must provide employees with readily accessible, and appropriate first-aid supplies. A nonmandatory example of appropriate supplies is listed in appendix A to § 1910.151.''

In an earlier rulemaking on June 18, 1998, 63 FR 33461, OSHA removed from paragraph (b) of § 1910.151 the requirement that a consulting physician approve first-aid supplies. In proposing to remove paragraph (b) (61 FR 37850, July 22, 1996), the Agency found that ''[c]ommercial first-aid kits are readily available and will meet the needs of most employers * * *.'' (Ex. 4–23, Docket No. S–778). In addition, OSHA noted that it expected employers to modify commercial first-aid kits in response to special or unusual workplace hazards, and to consult with a medical professional as necessary when doing so. To provide employers with helpful information for selecting first-aid kits, and to assist them in modifying the kits, the Agency added a nonmandatory appendix A to § 1910.151 (63 FR 33461); this appendix refers to the American National Standards Institute (ANSI) consensus standard (ANSI Z308.1–1978, ''Minimum requirements for industrial unit-type first aid kits'') that specifies basic first-aid supplies for the workplace. (**Note:** Section B above discusses OSHA's proposal to update this ANSI reference.)

The Agency preliminarily concludes that substituting the guidance of nonmandatory appendix A to § 1910.151 for the requirements specified in paragraph (b)(3) of § 1910.268 would reduce the regulatory burden on employers in the telecommunications industry by increasing their flexibility in meeting OSHA's requirements for first-aid kits, and would facilitate their compliance by making the requirements to provide first-aid kits consistent across the two standards. In addition, the Agency believes that the proposed revision would afford telecommunication employees with at least the same level of protection they currently receive because nonmandatory appendix A to § 1910.151, including the reference to the ANSI consensus standard, provides more extensive guidelines for selecting appropriate medical supplies than paragraph (b)(3) of § 1910.268 and, in addition, provides the recommendation that these supplies include personal protective equipment to prevent employee exposure to bloodborne pathogens. Accordingly, OSHA requests comments that discuss the proposed revision updating the nonmandatory recommendations for first-aid supplies.

D. 13 Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

In the 13 carcinogens standard, paragraph (f)(2) of the standard requires employers to provide the nearest OSHA Area Director with two reports on the occurrence of any incident that results in the release, into any area where employees may be potentially exposed, of any of the 13 carcinogenic substances regulated by the standard. These reports consist of an abbreviated preliminary report submitted within 24 hours of the chemical release, followed by a detailed report submitted within 15 calendar days of the incident. OSHA believes that these reports may be of little of no utility in view of the fact that recent substance-specific standards developed by the Agency do not contain this (or any other) reporting requirement. Accordingly, OSHA is proposing to delete this provision from the 13 carcinogens standard to reduce reporting requirements, as required by the Paperwork Reduction Act. OSHA requests comment on the extent to which this proposed revision would reduce reporting burden on employers and on the effect of such a deletion (if any) on employee health.

E. Vinyl Chloride (§ 1910.1017)

Paragraph (k)(6) of the vinyl chloride standard specifies that laboratories licensed by the U.S. Public Health Service (USPHS) under 42 CFR part 74 ''Clinical laboratories'') must analyze biological samples collected during medical examinations. However, 42 CFR part 74 is outdated, and the USPHS now addresses laboratory-licensing requirements under 42 CFR part 493 (''Laboratory requirements''). Therefore, the Agency is proposing to delete the reference to 42 CFR part 74 from paragraph (k)(6) of this standard. OSHA is seeking comment on the need to specify a licensing or quality-control

requirement, the extent to which the requirements specified in 42 CFR part 493 would be a suitable substitute for the requirements of former 42 CFR part 74, and whether any other reference or criteria are available that could serve this purpose.

F. Monthly and Quarterly Exposure Monitoring

Several of the Agency's older standards retain provisions that require employers to monitor employee exposures either monthly or quarterly, depending on the level of the toxic substance found in the workplace. These provisions include: Paragraphs (d)(2)(i) and (d)(2)(ii) of the vinyl chloride standard (§ 1910.1017), which require employers to conduct exposure monitoring at least monthly if employee exposures are in excess of the permissible exposure limit (PEL) and not less than quarterly if employee exposures are above the action level (AL); paragraphs (f)(3)(i) and (f)(3)(ii) of the standard regulating 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044), specifying that employers must perform exposure monitoring at least quarterly if employee exposures are below the PEL and no less than monthly if employee exposures exceed the PEL,[1] and paragraphs (e)(3)(ii) and (e)(3)(iii) of the acrylonitrile standard (§ 1910.1045), which contain requirements for employers to conduct exposure monitoring at least quarterly for employees exposed at or above the AL, but below the PEL, and at least monthly for employees having exposures above the PEL. There is little discussion in the preambles to these standards explaining the basis for adopting these monitoring frequencies, which suggests that OSHA may have relied on prevailing practice in establishing these frequencies.

In the substance-specific standards published by the Agency after these standards, exposure monitoring is required no more often than semiannually if employee exposures are at or above the AL, and no more than quarterly if exposures are above the PEL. Thus, OSHA is proposing to amend the exposure monitoring requirements specified in paragraphs (d)(2)(i) and (d)(2)(ii) of the vinyl chloride standard, paragraphs (e)(3)(ii) and (e)(3)(iii) of the acrylonitrile standard and paragraphs (f)(3)(i) and (f)(3)(ii) of the DBCP standard because they are inconsistent with the exposure monitoring protocols established by OSHA in its later substance-specified standards and no substantive reason for the increased monitoring frequency is apparent. OSHA is proposing to revise these paragraphs to require that employers conduct exposure monitoring at least quarterly if the results of initial exposure monitoring show that employee exposures are above the PEL, and no less than semiannually if these results indicate exposures that are at or above the AL. The Agency solicits comment on the extent to which, if any, this proposed revision would reduce the protection afforded by the existing standards to employees exposed to vinyl chloride, acrylonitrile and DBCP, and the extent to which the proposed revisions would reduce employer burdens, including cost and paperwork reductions.

OSHA notes that two of its standards (benzene, 1910.1028 and 1,3-butadiene, 1910.1051) provide for exposure monitoring frequency different from the quarterly/semiannual monitoring contained in other standards. The Agency is not revising benzene or 1,3-butadiene with respect to monitoring frequency. The exposure monitoring provisions in those standards have specific basis in their respective rulemaking records that preclude changing them for consistency under this standard improvement action.

G. Alternative Control Methods for Class 1 Asbestos Removal

Provisions in OSHA's asbestos standards for shipyard employment and construction (§§ 1915.1001, paragraph (g)(6)(iii), and 1926.1101, paragraph (g)(6)(iii), respectively) address alternative control methods used to perform Class I asbestos work. Specifically, these provisions require an employer to send the evaluation and certification of the alternative control method to OSHA's Directorate of Technical Support before removing more than 25 linear feet or 10 square feet or thermal-system insulation or surfacing material. The intent of this provision was the development of a database of alternative control methods for use in future rulemaking. However, in practice, this provision has been little used and no database has been developed. OSHA thus believes that this requirement is of little utility.

Current OSHA regulatory policy requires that paperwork provisions, such as this, be a benefit to employee health or serve some other useful regulatory purpose. Since certification of alternative control methods does not appear to meet this requirement, the Agency is proposing to delete it from the shipyard-employment and construction asbestos standards. OSHA invites comment on any regulatory benefit or purpose that removal of this provision would jeopardize.

H. Evaluating Chest X-rays Using the ILO U/C Rating

OSHA is proposing to amend paragraph (n)(2)(ii)(A) of the inorganic arsenic standard (§ 1910.1018) and paragraph (j)(2)(ii) of the coke oven emissions standard (§ 1910.1029); these provisions require that employees' chest x-rays receive an International Labor Office UICC/Cincinnati (ILO U/C) rating. Subsequent to the promulgation of these provisions, the Agency received information from two physicians that the ILO U/C rating is not suitable to evaluate chest x-rays for lung cancer. Regarding the use of the ILO U/C ratings specified by the inorganic arsenic standard, Stephen Wood, MD, MSPH, Corporate Medical Director for the Kennecott Corporation, states in a letter to OSHA (Ex. 1–1), ''This method of x-ray interpretation was designed specifically for use in pneumoconiosis or dust related disease. Arsenic does not cause pneumoconiosis. This classification system is unnecessary for cancer surveillance and represents a substantial cost and logistical burden to industry.'' Later, Steven R. Smith, MD, Director of Occupational Health and Occupational Medicine, Community Hospitals Indianapolis, wrote to the Agency (Ex. 1–2) addressing the ILO U/C rating required by the coke oven emissions standard:

> I am sure you know that the main pulmonary problem with coke oven emission exposure is carcinoma of the lung and not pneumoconiosis. The main merit of the ILO U/C rating system is that it standardizes the reading of films where there are parenchymal opacities[,] either round nodules or linar densities. For the problem of carcinoma of the lung this system really has little to add over the proper interpretation of films by skilled radiologists. * * * I think it is of much more importance that the chest films done as part of the coke oven emissions exposure surveillance be interpreted by expert radiologists who are aware of the fact the films are being done primarily for pulmonary carcinoma. To require that an ILO U/C rating system be employed as well seems to me as though it is going to necessitate an additional expense[,] as well as to greatly limit the number of radiologists who are able to interpret such films.

Based on the information provided in these letters, and on the opinion of the Agency's Office of Occupational Medicine, OSHA believes that the ILO U/C rating may not be a suitable method to use in evaluating chest x-rays for lung cancer. Therefore, the Agency is

[1] This standard does not specify an action level, so employers must continue to monitor employee DBCP exposures on a continuing basis. See section O (''Additional Issues for Comment'') of this Summary and Explanation for a discussion of this issue.

proposing to remove the ILO U/C rating requirements specified in the inorganic arsenic and coke oven emissions standards, thereby permitting the examining physician to determine the most effective procedure for evaluating these chest x-rays. The proposed approach would be similar to that taken in recent Agency standards that require the evaluation of chest x-rays for cancer (for example, paragraph (l)(4)(ii)(C) of the cadmium standard (§ 1910.1027)). In this regard, OSHA solicits comment and other information regarding the suitability of the ILO U/C ratings for evaluating chest x-rays for cancer, the identity of any other available method or procedure that could effectively substitute for ILO U/C ratings, and the safety and efficacy of the proposed elimination of the requirement.

I. Signed Medical Opinion

Paragraph (l)(7)(i) of the asbestos standard (§ 1910.1001), and paragraph (l)(10)(i) of the cadmium standard for general industry (§ 1910.1027) and construction (§ 1926.1127), require that the examining physician sign the written medical opinion provided as part of the medical-surveillance requirements of these standards. The preamble to the cadmium standards states that ''the [purpose of the]'' requirement that the physician sign the opinion is to ensure that the information that is given to the employer has been seen and read by the physician and that the physician has personally determined whether the employee may continue to work in cadmium-exposed jobs'' (57 FR 42366). The requirement that a medical opinion be obtained by the employer is not affected by this proposed revision. No other substance-specific standard promulgated by OSHA requires that the physician sign the medical opinion.

The Agency believes that the requirement to sign a medical opinion written by a physician is unnecessary, precludes electronic transmission of the opinion from the physician to the employer, and provides no additional benefit to employees. Accordingly, OSHA is proposing to remove this requirement from these paragraphs. In this regard, the Agency requests comment on whether or not a signed medical opinion is necessary to ensure that the examining physician has reviewed it prior to submitting it to the employer.

J. Providing Semiannual Medical Examinations to Employees Experiencing Long-Term Toxic Exposures

Three of the Agency's oldest health standards specify that employers provide semiannual medical examinations to employees having long-term exposures to the toxic substances regulated by these standards. However, these standards, which regulate employee exposures to vinyl chloride (§ 1910.1017), inorganic arsenic (§ 1910.1018), and coke oven emissions (§ 1910.1029), only require that other employees (i.e., those exposed for lesser periods) be given annual medical examinations.

Under paragraph (k)(2)(i) of the vinyl chloride standard, employers must provide a semiannual medical examination to employees exposed to vinyl chloride or polyvinyl chloride manufacturing above the action level for at least 10 years. The preamble to this standard provides no rationale for this requirement.

Paragraph (n)(3)(ii) of the inorganic arsenic standard specifies that employers must offer semiannual medical examinations to employees who are 45 years or older or have been exposed above the action level to inorganic arsenic for at least 10 years. In justifying this requirement, the Agency stated in the preamble to this standard that ''[l]ong-term employees who have exposures now or in the near future below the action level, but have had exposure above the action level now or in the recent past, are quite likely to have had substantially greater exposures in the more distant past * * * the epidemiological studies indicate that risk increases with both *degree* and *duration* of exposure'' (43 FR 19620). [Italics in original.] OSHA notes that this statement addressed high exposures that occurred prior to the 1970's.

Paragraphs (j)(3)(ii) and (j)(3)(iii) of the coke oven emissions standard require that employers provide semiannual medical examinations for: Employees who are at least 45 years of age or have five or more years of employment in a regulated area, and for an employee in this age/experience group who ''transfers or is transferred from employment in a regulated area * * * [for] as long as that employee is employed by the same employer or a successor employer.'' In the preamble to this standard, the Agency explains this requirement by stating that ''the high risk population requires more frequent and more comprehensive testing than the remainder of the population'' (41 FR 46779).

OSHA believes that the available evidence does not support the requirements for semiannual medical examinations offered to employees with long-term exposures to vinyl chloride, inorganic arsenic, and coke oven emissions. Based on a review of the existing medical research literature, the Agency recently amended the inorganic arsenic and coke oven emissions standards by reducing the frequency of chest x-rays from semiannually to annually, and by removing the requirement for sputum cytology entirely from these standards (63 FR 33450). This review indicated that semiannual chest x-rays did not increase employee protection through early detection of lung cancer, while sputum cytology did not provide additional protection to employee health, over and above that provided by an annual chest x-ray. Semiannual medical examinations are less useful when the frequency of x-ray has been reduced. In addition, no other substance-specific standards promulgated by OSHA require semiannual medical examinations.

Based on the available evidence, the Agency believes that semiannual medical examinations are unnecessary, and that annual medical examinations are sufficient to detect cancer and other medical impairments caused by exposure to vinyl chloride, inorganic arsenic, and coke oven emissions. OSHA also believes that current industry practice with regard to employees occupationally exposed to toxic substances is to screen these employees annually. Therefore, the Agency is proposing to revise the standards regulating these toxic substances to be consistent with its other substance-specific standards, which require that employers provide annual medical examinations for covered employees regardless of the duration of their exposures. The Agency request comment and other information comparing the effectiveness of annual and semiannual medical examinations in detecting cancer and other medical impairments caused by exposure to vinyl chloride, inorganic arsenic, and coke oven emissions.

The proposed revisions to paragraphs (j)(3)(ii) and (j)(3)(iii) of the coke oven emissions standard do not include removing the requirement to conduct semiannual urinary cytology examinations. However, OSHA is raising this issue for comment and may include such removal in the final rule if warranted, based on comments. The coke oven emissions standard (29 CFR 1910.1029) requires that employers provide urinary cytology examinations

(paragraph (j)(2)(vii)) semiannually to certain exposed employees (paragraph (j)(3)(ii)). OSHA adopted this requirement based on the belief, at the time, that urinary cytology would serve as a useful tool in screening for cancer.

The Agency believes that the utility of urinary cytology as a screening tool for cancer should be reexamined. OSHA's Office of Occupational Medicine (OOM) reviewed data pertaining to the benefits of urinary cytology in the detection of bladder cancer (Ex. 1–3). The literature indicates that the sensitivity (*i.e.,* ability to detect bladder cancer in those who have it) of urine cytology is not very powerful and, thus, not a particularly effective screening test for this disease. Although there may be views to the contrary, on balance OOM recommends that urinary cytology testing be eliminated from the coke oven standard. However, OOM does recommend retaining dipstick urinalysis an inexpensive means of maintaining the urologic screening program until more effective technology is developed, despite its low sensitivity for detecting cancer. Comment is requested on the issue and on the OOM recommendation retaining dipstick urinalysis.

K. Notifying OSHA Regarding Use or Regulated Areas

The Agency is proposing to delete paragraph (d) of the 1,2-dibromo-3-chloropropane (DBCP) standard (§ 1910.1044). This paragraph requires employers to submit a report to the nearest OSHA Area Office that describes their use of DBCP, and to do so within 10 days of introducing the substance into the workplace. The preamble to the standard does not provide a rationale for this requirement, and no other substance-specific standard published by the Agency has a similar requirement. OSHA has not found this provision of the standard useful for its inspectors.

Accordingly, OSHA finds that the provision has little utility in practice and thus, it may be appropriate to remove this provision to reduce paperwork. OSHA requests comment on this issue and the proposed deletion of paragraph (d) of the DBCP standard.

A number of OSHA standards dating from the 1970s require employers to notify the nearest OSHA Area Director/Office if they are required by the standard to establish regulated areas in their workplaces. The following standards have such a requirement: 13 carcinogens (§ 1910.1003, paragraph (f)(1)), vinyl chloride (§ 1910.1017, paragraph (n)(1)), inorganic arsenic (§ 1910.1018, paragraph (d)(1)), and acrylonitrile (§ 1910.1045, paragraph (d)(1)).

The preamble to the vinyl chloride standard explains that the purpose of this notification requirement is to ''enable the Agency to obtain information on control technology'' (39 FR 35890), while the preamble to the acrylonitrile standard notes that the requirement is designed to enable OSHA to Abe aware of facilities where substantial exposure * * * exists'' (43 FR 45762). Further, in the years since these standards were promulgated, OSHA has not found the notification provision useful for the purposes described or for inspection purposes. In addition, recent substance-specific standards promulgated by OSHA do not require such notification. Accordingly, the Agency is proposing to delete this notification requirement from the 13 carcinogens, vinyl chloride, inorganic arsenic, and acrylonitrile standards to reduce paperwork. OSHA invites comment on the effect this deletion would have in general, and specifically on employee protection, employer burden, and paperwork reduction.

L. Reporting Emergencies to OSHA

Paragraph (n)(2) of the vinyl chloride standard (§ 1910.1017) and paragraph (d)(2) of the acrylonitrile standard (§ 1901.1045) require employers to report the occurrence of emergencies involving these substances to the nearest OSHA Area Director/Office. The preambles to these standards are silent on the reason for this reporting requirement and OSHA has not found such reporting, which has occurred only rarely, useful. In addition, other Agency substance-specific standards do not have such a requirement. Accordingly, OSHA is proposing to delete these reporting provisions of the vinyl chloride and acrylonitrile standards as unnecessary and to reduce paperwork. OSHA asks for comment on the proposed deletions and for information on any impact such an action might have.

M. Semiannual Updating of Compliance Plans

The Agency's substance-specific standards typically require employers to develop compliance plans to meet the exposure-control objectives of the standard. Most of these standards specify that employers must update these plans at least annually, and OSHA believes that annual updating is sufficient to ensure the continued effectiveness of the plans. However, several older substance-specific standards promulgated by the Agency require semiannual updating; these standards include: Vinyl chloride (§ 1910.1017, paragraph (f)(3)); inorganic arsenic (§ 1910.1018, paragraph (g)(2)(iv)); lead (§ 1910.1025, paragraph (e)(3)(iv)); coke oven emissions, paragraph (f)(6)(iv); 1,2-dibromo-3-chloropropany (DBCP)(§ 1910.1044, paragraph (g)(2)(ii)); acrylonitrile (§ 1910.1045, paragraph (g)(2)(v)); and lead in construction (§ 1926.62, paragraph (e)(2)(v)).

The preambles to the standards containing this requirement present no evidence pointing to the need for such a requirement in facilities handling these substances, and OSHA believes that current industry practice considers annual updating sufficient. In particular, there is no evidence to suggest that employee health protections would be lessened by this proposed change. Therefore, the Agency is proposing to revise its older substance-specific standards to require annual, instead of semiannual, updating of compliance plans. OSHA believes that the proposed revisions would make this requirement consistent across its standards without diminishing employee protection and will reduce paperwork. The Agency solicits comment on any impact, particularly on employee health that the proposed revision might have.

N. Notifying Employees of Their Exposure Monitoring Results

Many of OSHA's substance-specific standards require employers to notify employees of their exposure monitoring results. These standards require the employer to provide written notification to each employee included in the monitoring program. However, some of these standards also require the employer to post the monitoring results, while others allow posting in lieu of individual notification. In addition, the number of days that may elapse between receipt of an employee's exposure monitoring results and employee notification varies across the standards. These periods range from ''as soon as possible'' to 20 working days after receipt of the monitoring results. Table 1 below describes the methods employers are required to use when notifying employees and the amount of elapsed time permitted by 15 substance-specific standards for general industry, one such standard for shipyard employment, and four such standards for construction.

TABLE 1.—NOTIFYING EMPLOYEES OF THEIR EXPOSURE RESULTS

Standard [1]	Method of notification	Maximum period for notification
Part 1910 (General Industry):		
Asbestos (§ 1910.1001(d)(7)(i))	Individually in writing *or* posting	15 working days.
Vinyl Chloride (§ 1910.1017(n)(3))	Individually in writing only	10 working days.
Inorganic Arsenic (§ 1910.1018(e)(5)(i))	Individually in writing only	5 working days.
Lead (§ 1910.1025(d)(8)(i))	Individually in writing only	5 working days.
Cadmium (§ 1910.1027(d)(5)(i))	Individually in writing *and* posting	15 working days.
Benzene (§ 1910.1028(e)(7)(i))	Individually in writing only	15 working days.
Coke Oven Emissions (§ 1910.1029(e)(3)(i))	Individually in writing only	5 working days.
Cotton Dust (§ 1910.1043(d)(4)(i))	Individually in writing only	20 working days.
1,2–Dibromo-3-Chloropropane (§ 1910.1044(f)(5)(i))	Individually in writing only	5 working days.
Acrylonitrile (§ 1910.1045(e)(5)(i))	Individually in writing only	5 working days.
Ethylene Oxide (§ 1910.1047(d)(7)(i))	Individually in writing *or* posting	15 working days.
Formaldehyde (§ 1910.1048(d)(6))	Individually in writing *or* posting	15 working days.
Methylenedianiline (§ 1910.1050(e)(7)(i))	Individually in writing *or* posting	15 working days.
Butadiene (§ 1910.1051(d)(7)(i))	Individually in writing *or* posting	5 working days.
Methelene Chloride (§ 1910.1052(d)(5)(i))	Individually in writing *or* posting	15 working days.
Part 1915 (Shipyard Employment):		
Asbestos (§ 1915.1001(f)(5)(i) and (f)(5)(ii))	Individually in writing *or* posting	As soon as possible.
Part 1926 (Construction):		
Methylenedianiline (§ 1926.60(f)(7)(i))	Individually in writing *or* posting	15 working days.
Lead (§ 1926.62(d)(8)(i))	Individually in writing only	5 working days.
Asbestos (§ 1926.1101(f)(5)(i) and (f)(5)(ii))	Individually in writing *or* posting	As soon as possible.
Cadmium (§ 1926.1127(d)(5)(i))	Individually in writing *and* posting	5 working days.

[1] Includes the paragraphs containing the requirements.

The preambles to these standards generally do not identify substance-specific or record-based reasons for these differences in notification methods and timing. Further, there is no evidence to suggest that differences in timing, within the ranges reflected in these standards, have an effect on employee health. Accordingly, OSHA believes that making the notification and timing requirements consistent across standards will reduce regulatory confusion and facilitate compliance without diminishing employee protection. The Agency is therefore proposing to allow employees to provide employees with their exposure monitoring results either individually in writing or by posting the employees' results in a readily accessible location.

In the case of notification there are a number of considerations. Individual notification gives employees a permanent record, employees may take the notification more seriously, and there are no privacy concerns. However, the paperwork burden is increased for employers and employees will have less knowledge of overall trends. Posting has the converse strengths and weaknesses. OSHA is proposing to give the employer the option of either individual notification or posting, or both. The Agency requests comments on these issues.

The point of notification is to ensure that employees are aware of their exposures to OSHA-regulated substances, and the Agency preliminarily concludes that this goal can be met either through individual written notification or through posting in a location that is readily accessible to all employees whose results are being posted. OSHA requests comment on this preliminary finding, particularly with respect to any impact the proposed changes might have on employee protection.

The Agency is also proposing to require employers regulated by the 15 substance-specific standards for general industry (see Table 1 above) to notify their employees of their exposure monitoring results within 15 working days of receiving the results. OSHA believes consistency of period will simplify compliance and that 15 days is a reasonable time frame.

For employers covered by the four substance-specific standards for construction and the asbestos standard for shipyard employment listed in the table, OSHA is proposing to require notification as soon as possible but no later than five working days after the employer receives the results of the exposure monitoring performed under these standards. Both the asbestos and cadmium standards established different notification intervals based on the industries affected: the asbestos standards requires notification within 15 days for general-industry employers and ''as soon as possible'' for construction and shipyard employers which may be involved in more short-term and intermittent activities, while the cadmium standards specified a maximum period of 15 working days for general-industry employers and five working days for construction employers. The preamble to the cadmium standard for construction states that the five working-day notification period is appropriate ''in light of the short term nature of many construction jobs'' (57 FR 42383).

OSHA is requesting comment on whether a 5 working day or 15 working day notification period is more appropriate for the shipyard standard due to the nature of the work in that industry.

The Agency finds that these factors, short-term or intermittent projects, may justify retaining the shorter notification period for construction activities. OSHA believes that five days is a reasonable interval for notification. However, both shipyards and construction are covered by the 15 working day requirement for other health standards. OSHA is not proposing to change those other standards because they do not have as much impact in the construction or shipyard industry and they may result in an increase in burden.

OSHA invites comment and other information on these proposed revisions to the notification requirements in OSHA health standards, particularly on the differences proposed for employers in different industries and any

reduction in employee protection that may result from the proposed revisions.

O. Additional Issue for Comment

Social Security Numbers

Most of OSHA's substance-specific standards require that records, especially exposure monitoring and medical-surveillance records, include the employee's social security number (SSN). In the preamble to the final methylene chloride standard (62 FR 1598), OSHA justified the requirement for employers to document social security numbers by stating: ''Social security number * * * are correlated to employee identity in other types of records. These numbers are a more useful differentiation among employees [than other possible methods] since each number is unique to an individual for a lifetime and does not change as an employee changes employers.'' In a letter of interpretation regarding the use of social security numbers in the asbestos standard for construction (April 16, 1999), the Agency provided the following rationale for requiring SSNs: ''[M]any employees have identical or similar names; identifying employees solely by name makes it difficult to determine to which employee a particular record pertains. The present system avoids this problem because Social Security numbers are unique to the individual.''

Based on privacy concerns, the Office of Management and Budget recently requested OSHA to examine alternatives to requiring social security numbers for employee identification. Although the Agency is not specifically proposing to delete the requirement for SSNs from its standards at this time, OSHA is requesting the public to submit comments on: The necessity, usefulness, and effectiveness of social security numbers as a means of identifying employee records, notably exposure monitoring and medical-surveillance records, and any privacy concerns or issues raised by this requirement, as well as the availability of other equally effective methods of uniquely identifying employees for OSHA recordkeeping purposes.

III. Legal Considerations

The Agency believes that the proposed rule would not reduce the employee protections put into place by the rules being revised; the intent of the present rulemaking is to remove outdated, unnecessary or duplicative provisions from these older rules and makes them more consistent. It is therefore unnecessary to determine significant risk, or the extent to which the proposed rule would reduce that risk, as would be required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980), the Supreme Court ruling applying to standards addressing new hazards, setting more stringent standards, or reducing employee protection. Accordingly, no finding of significant risk is necessary.

IV. Preliminary Economic Analysis

Introduction

This proposed rule deletes or revises a number of provisions in OSHA standards that are duplicative, unnecessary, or potentially in conflict with the rules of other Federal agencies. All of the changes OSHA is making are expected to benefit the regulated community by reducing burden and confusion, enhancing occupational safety and health to employees, and improving compliance by employers. For most of these changes, economic benefits can be quantified.[2] By deleting and revising these provisions, this Phase II Proposed Revision Standard will lessen the burden employers currently experience, which will, in turn, generate cost savings. OSHA estimates annual savings of $6.57 million from these revisions (Table 3). Total burden hours would fall by 207892. (The estimates in this Economic Analysis may differ very slightly from the estimates in the Paperwork Reduction Analysis because of rounding.)

TABLE 3.—ESTIMATED ANNUAL COST SAVINGS DUE TO THE STANDARDS IMPROVEMENT PROJECT—PHASE 2.

Provision	Annual cost savings
A § 1910.42, Temporary Labor Camps	$0
B § 1910.151(b), Reference to First Aid Supplies in Appendix A	0
C § 1910.268, First Aid Supplies Telecom	5,603
D § 1910.1003(f)(2) Incident Reports, 13 Carcinogens	27,284
E § 1910.1017(k)(6), Vinyl Chloride	0
F:	
§ 1910.1017(d)(2)(i), Exposure Monitoring, Vinyl Chloride	102,750
§ 1910.1017(d)(2)(ii), Exposure Monitoring, Vinyl Chloride	25,687
§ 1910.1044(f)(3)(i) & f(3)(ii), Exposure Monitoring, 1,2–DBCP	0
§ 1910.1045(e)(3)(ii), Exposure Monitoring, Acrylonitrile	22,446
Subtotal	150,883
G:	
§ 1915.1001(g)(6)(iii), Alt. Control Methods, Asbestos Removal	39
§ 1926.1101(g)(6)(iii), Alt. Control Methods, Asbestos Removal	39
Subtotal	78
H:	
§ 1910.1018(n)(2)(ii)(A), ILO/UC Rating, Inorganic Arsenic	0
§ 1910.1029(j)(2)(ii), ILO/UC Rating, Coke Oven Emissions	0
I:	
§ 1910.1001(1)(7)(i), Signed Opinion, Asbestos	0
§ 1910.1027(1)(10)(i), Signed Opinion, Cadmium Gen. Industry	0
§ 1926.1127(1)(10)(i), Signed Opinion, Cadmium Con. Industry	0

[2] OSHA estimates that a few of these revised provisions may not have any readily quantifiable reductions in burden hours and/or costs, although they normally increase employer flexibility.

TABLE 3.—ESTIMATED ANNUAL COST SAVINGS DUE TO THE STANDARDS IMPROVEMENT PROJECT—PHASE 2.—Continued

Provision	Annual cost savings
J:	
§ 1910.1017(k)(2)(i), Semiannual Medical Exams, Vinyl Chloride	31,064
§ 1910.1018(n)(3)(ii), Semiannual Medical Exams, Inorganic Arsenic	164,238
§ 1910.1029(j)(3)(ii–iii), Semiannual Medical Exams, Coke Oven emissions	362,443
Subtotal	557,745
K:	
§ 1910.1044(d), Notifying OSHA Regarding Regulated Areas, 1,2–DBCP	0
§ 1910.1003(f)(1) Notifying OSHA Regarding Regulated Areas, 13 Carcinogens	5,457
§ 1910.1017(n)(1) Notifying OSHA Regarding Regulated Areas, Vinyl Chloride	656
§ 1910.1018(d)(1) Notifying OSHA Regarding Regulated Areas, Inorganic Arsenic	117
§ 1910.1045(d)(1) Notifying OSHA Regarding Regulated Areas, Acrylonitrile	647
Subtotal	6,876
L:	
§ 1910.1017(n)(2) Reporting Emergencies, Vinyl Chloride	22,503
§ 1910.1045(d)(2) Reporting Emergencies, Acrylonitrile	2,588
Subtotal	25,090
M:	
§ 1910.1017(f)(3) Semiannual Updating Compliance Plans, Vinyl Chloride	7,614
§ 1910.1018(g)(2)(iv), Semiannual Updating Compliance Plans, Inorganic Arsenic	2,284
§ 1910.1029(f)(6)(iv), Semiannual Updating Compliance Plans, Coke Oven Emissions	1,332
§ 1910.1044(e)(3)(iv), Semiannual Updating Compliance Plans, 1,2–DCBP	0
§ 1910.1045(g)(2)(ii), Semiannual Updating Compliance Plans, Acrylonitrile	448
§ 1926.1025(e)(2)(v), Semiannual Updating Compliance Plans, Lead, Con.	4,209,657
Subtotal	4,221,334
N:	
§ 1910.1017(n)(3) Notify Employees of Expos. Monitoring Results, Vinyl Chloride	2,741
§ 1910.1018(e)(5)(i) Notify Employees of Expos. Monitoring Results, Inorganic Arsenic	9,393
§ 1910.1025(d)(8)(i) Notify Employees of Expos. Monitoring Results, Lead, Gen Ind.	891,293
§ 1910.1027(d)(5)(i) Notify Employees of Expos. Monitoring Results, Cadmium, Gen Ind	50,540
§ 1910.1029(e)(3)(i) Notify Employees of Expos. Monitoring Results, Coke Oven	25,765
§ 1910.1043(d)(4)(i) Notify Employees of Expos. Monitoring Results, Cotton Dust	68,102
§ 1910.1044(f)(5)(i) Notify Employees of Expos. Monitoring Results, 1,2–DBCP	0
§ 1910.1045(e)(5)(i) Notify Employees of Expos. Monitoring Results, Acryonitrile	8,255
§ 1926.62(d)(8)(i) Notify Employees of Expos. Monitoring Results, Lead Construction	494,063
§ 1926.1127(d)(5)(i) Notify Employees of Expos. Monitoring Results, Cadmium, Con.	27,189
Subtotal	1,454,431
Total	6,572,236

This notice-and-comment rulemaking is necessary because a number of the proposed revisions are substantive. The Agency will base its final decisions regarding these proposed revisions on the record developed through public comment. The following paragraphs discuss the Preliminary Economic Analysis in detail.

Methodology

This section describes OSHA's development of the total annual paperwork requirements for a provision or standard, then presents a methodology for aggregating these costs into industry-specific estimates of total one-time costs, annualized costs (one-time or intermittent costs amortized over a specific number of years), or annual costs. For the purposes of this Preliminary Economic Analysis, one-time or intermittent costs have been annualized using a discount rate of 7 percent[3], as required by the U.S. Office of Management and Budget (OMB), over a specified period of time using the formula:

$$a = (i \times (1 + i)^n)/((1 + i)^n - 1),$$

where

a=annualization factor,

i=discount rate, and

n=economic life of the one-time or intermittent investment

OSHA uses average hourly earnings, including benefits, to represent the cost of employee time. For the relevant occupational categories, mean hourly earnings from the Year 2000 National Compensation Survey by the Bureau of Labor Statistics have been adjusted to reflect the fact that fringe benefits comprise about 27.1 percent[4] of total employee compensation in the private

[3] Office of Management and Budget, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' Circular No. A–94 Revised (Transmittal Memo No. 64). October 29, 1992.

Office of Management and Budget, ''Economic Analysis of Federal Regulations Under Executive Order 12866.'' January 11, 1996, p. 9.

[4] Straight-time hourly wages and salaries were estimated to be 72.9 percent of total compensation in 2000. Thus, total compensation, including benefits, for workers with average hourly earnings of $13.41 would be $13.41/.729 = $18.40.

sector.[5] The costs of labor used in this analysis are therefore estimates of total hourly compensation. These average hourly costs are: $38.92 for managers; $27.39 for production supervisors; $24.68 for chemical technicians; $18.40 for production workers; and $17.34 for clerical workers.

Estimates of the number of establishments and the number of employees affected by a proposed change are usually either from a statement in support of information collection requirements (ICR) or from an economic analysis. The number of employees affected and their hourly total wages are used to calculate costs. The changes proposed in the Phase II Standards Improvement Project pertain to approval of equipment, reporting incidents, exposure monitoring, laboratory analysis, medical examinations, and employee notification requirements.

Most of the proposed revised standards reduce costs related to a percentage of affected employees in the industry and the number of labor hours required to monitor a specific activity. Usually, the frequency of an activity, the number of employees requiring the activity, and the cost of the activity per employee were used to arrive at the estimated costs. In some instances, the costs of the activity were calculated according to the number of affected establishments.

A. Temporary Labor Camps (§ 1910.42)

Paragraphs (1) and (2) of § 1910.42 require that the camp superintendent immediately report the outbreak of certain diseases to the local health authority ''by telegram or telephone.'' OSHA believes that because other forms of communication are readily available, the requirement for notification via ''telegram or telephone'' is unnecessarily restrictive. Thus, the Agency proposes deleting the requirements specifying notification by telegram or telephone. The Agency believes the revision would give more flexibility to employers that can result in cost savings. However, the Agency has not calculated the value of such savings.

B. Reference to First-Aid Supplies in Appendix A to the Standard on Medical Services and First Aid (§ 1910.151)

Paragraph (b) of § 1910.151, the Agency's standard regulating medical services and first-aid supplies, requires employers to ensure that ''[a]dequate first aid supplies shall be readily available [in the workplace].'' OSHA added a nonmandatory appendix to this standard in a recent rulemaking (63 FR 33460) to help employers meet this requirement. OSHA is proposing to update this appendix. This revision would not impose any additional cost on employers because appendix A is non-mandatory.

C. First-Aid Supplies in the Telecommunications Standard (§ 1910.268)

The proposed rule revises Paragraph (b)(3) of OSHA's Telecommunications Standard (§ 1910.268) that requires an employer to: provide first-aid supplies recommended by a consulting physician; ensure that the items are readily accessible and housed in weatherproof containers if used outdoors; and inspect the items at least once a month and replace expended items. The Agency is proposing to revise paragraph (b)(3) to read, ''Employers must provide employees with readily accessible first-aid supplies in accordance with Appendix A to (§ 1910.151).''

The propose rule eliminates the requirements in § 1910.268(b)(3) that employers must have certain first-aid supplies approved by a consulting physician before they are used. This requirement applied only in cases where no infirmary, clinic, or hospital was in close proximity to the worksite and the employer intended to treat first-aid injuries at the site. OSHA's analysis here relies on the assumptions in the Final Economic Analysis in an earlier rulemaking (63 FR 33461).[6] Based on the ICR to that rulemaking, the Agency estimates that 10 percent of the establishments would meet these criteria. OSHA also estimates that five minutes of a physician's time, valued at $100/hr[7] ($8.33 for five minutes), would be required to approve the contents of the first-aid kit at these establishments.

OSHA assumes that the physician would need to approve the first aid supplies once every 10 years, considering the possibility of the development of new kinds of medical supplies and of new hazards at the worksite. The cost of five minutes of a physician's time annualized over a 10 year period at 7 percent interest is $1.19 per year (5/60 × $100 × annualization factor of 0.1424).

The Agency estimates that there were approximately 47,217 employers in the telecommunications industry in 1998 [*County Business Patterns,* 1998]. The major sector in the telecommunications industry is telephone communications, which consists of establishments that operate both wireline and wireless networks. The wireline networks use wires and cables to connect customers' premises to central offices maintained by the telecommunications companies. The wireless networks on the other hand operate through the transmission of signals over networks of radio towers and communications satellites [Career Guide to Industries 2000–01 Edition, Telecommunications (SIC's 481, 482, 489)]. Since first-aid supplies have to be approved once every 10 years, each year approximately 10 percent of the establishment incur costs to comply with the current requirement. Thus, current annualized cost is approximately $5,603 ((47,217 × 10%) × $1.19). Eliminating the requirement for a physician's approval of an establishment's first-aid kit would eliminate this burden of $5,603.

D. 13 Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

The proposed rule would delete provision § 1910.1003(f)(2) that requires reporting of releases of a regulated carcinogen to the nearest OSHA Area Director. Deleting this provision results in savings in burden hours and associated costs.

Based on the ICR, the Agency estimates that reportable incidents occur once per year at each facility and that about 97 employers fall under OSHA jurisdiction and will be affected by the rule. A manager and a clerical worker will each take five hours to collect information and to report a release of a regulated carcinogen to the nearest OSHA Area Director, for a total of 10 hours per employer. Thus, 970 burden hours are attributed to this provision (485 burden hours each by a manager and a clerk), at an annual cost of $27,286.[8] By eliminating the requirement to report releases of a regulated carcinogen to the nearest OSHA Area Director, OSHA will eliminate annual cost burdens to employers of $27,286.

E. Vinyl Chloride (§ 1910.1017)

Paragraph (k)(6) of the Vinyl Chloride Standard (§ 1910.1017) specifies that

[5] U.S. Department of Labor, Bureau of Labor Statistics, ''Employer Costs for Employee Compensation—March 2001, June 29, 2001, p. 5.''

[6] 29 CFR parts 1910 and 1926 Standards Improvement (Miscellaneous Changes) For General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic; Final Rule—63:3350–33469.

[7] Opportunity cost is estimated by the market price for occupational physical exams, i.e., at the rate of about $100 an hour.

[8] Annual cost saving ($27,286) due to revision of this standard is obtained by multiplying 485 burden hours by each wage rate and adding the products, i.e. [485 × ($38.92 + $17.34)].

laboratories licensed by the U.S. Public Health Service (PHS) under 42 CFR part 74 (''Clinical laboratories'') must analyze biological samples collected during medical examinations. however, 42 CFR part 74 is outdated, and the PHS now addresses laboratory licensing requirements under 42 CFR part 493 (''Laboratory requirements''). Therefore, the Agency is proposing to delete the reference to 42 CFR part 74 from paragraph (k)(6) of this standard. There are no cost applications to the proposed change since the requirements are almost the same.

F. Monthly and Quarterly Exposure Monitoring (§ 1910.1017)(§ 1910.1044) (§ 1910.1045)

Several of the Agency's older standards retain provisions that require employers to monitor employee exposures either monthly or quarterly, depending on the level of the toxic substance found in the workplace. These include: paragraphs (d)(2)(i) and (d)(2)(ii) of the Vinyl Chloride Standard (§ 1910.1017), requiring employers to conduct exposure monitoring at least monthly if employees exposure are above the permissible exposure limit (PEL), and not less than quarterly if employee exposures are above the action level (AL); paragraphs (f)(3)(i) and (f)(3)(ii) of the 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044) Standard, requiring exposure monitoring at least quarterly if employee exposures are below the PEL, and no less than monthly if employee exposures exceed the PEL [9]; and paragraphs (e)(3)(ii) and (e)(3)(iii) of the Acrylonitrile Standard (§ 1910.1045), requiring monitoring at least quarterly for employees exposed at or above the AL, but below the PEL, and at least monthly for employees exposed above the PEL. Little discussion exists in the preambles to these standards regarding the basis for adopting these monitoring frequencies, indicating that OSHA relied on prevailing practice in making those determinations.

For substance-specific standards published by the Agency subsequent to these standards, the most frequent exposure monitoring requirement is semiannually if employee exposures are at or above the AL, and quarterly if they are above the PEL. Thus, OSHA is proposing to amend the previously mentioned exposure monitoring requirements because they are inconsistent with the exposure monitoring protocols established by OSHA in its later substance-specific standards. OSHA is proposing to require that employers conduct exposure monitoring at least quarterly if the results of initial exposure monitoring show that the employee exposures are above the PEL, and no less than semiannually if these results are at or above the AL.

This economic analysis relies on the following assumptions and facts of employee exposure to vinyl chloride. The Agency estimates, based on OSHA sampling data, that one percent of all employees are exposed between the AL and the permissible exposure level (PEL), and another one percent are exposed above the PEL. Employees exposed between the AL and the PEL must be monitored quarterly, while those exposed above the PEL must be monitored monthly. OSHA assumes that employers use an organic vapor badge for monitoring because these badges do not interfere with employees' work activity. A supervisor, earning $27.39 per hour, will spend five minutes to administer, and five minutes to collect, each vapor badge, for a total of 0.17 hour. A clerical worker, earning $17.34 per hour, will spend five minutes (.08 hour) to maintain each record of a monitoring event.

The proposed rule revises the Vinyl Chloride Standard § 1910.1017(d)(2)(i) to require quarterly rather than monthly exposure monitoring if above the PEL. Under monthly monitoring prior to revision, burden hours would be 393 hours, assuming that 131 employees are monitored 12 times a year, with a supervisor spending 0.17 hour and a clerical spending .08 hour each event to administer and collect vapor badges. The cost of monitoring would be $9,500 (267 hours × $27.39 per hour plus 126 hours times $17.34 per hour). Under the revised rule, burden hours would be 131 hours, since the 131 employees would be monitored only four times a year. Costs would be reduced to $3,167 (89 hours × $27.39 plus 42 hours times $17.34). Savings due to the revision from monthly to quarterly monitoring thus would be 262 burden hours, worth $6,334. There would also be savings of 2/3 of the current cost $144,624 for badges and laboratory analysis; that is, $96,416. Thus, total annual savings attributed to this provision would be $102,750 ($6,334 + $96,416).

The proposed rule also revises the Vinyl Chloride Standard § 1910.1017(d)(2)(ii) to require semiannual rather than quarterly exposure monitoring if exposure is at or above the AL. With quarterly exposure monitoring, burden hours would be 131 hours, costing $3,167. Revising the provision to allow for semiannual monitoring would cut burden hours to 66 hours, as 131 employees would be monitored only two times a year. The costs of monitoring would be $1,583 (45 hours × $27.39 plus 21 hours times $17.34). There would be a saving of 66 burden hours (quarterly burden hours of 131 hours − semiannual burden hours of 66 hours) and a corresponding cost saving of $1,583 (quarterly costs of $3,167 − semiannual costs of $1,583). The cost of badges and laboratory analysis would fall by one-half, or from $48,208 to $24,104. Thus, total annual cost savings due to this revision would be $25,687 ($1,583 + $24,104.

OSHA is of the opinion that revision of paragraphs (f)(3)(i) and (f)(3)(ii) of the standard regulating, 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044), would have no effect on cost or burden hours since no U.S. employers currently produce DBCP-based end products.

The proposed revision of paragraphs (e)(3)(ii) and (e)(3)(iii) of the Acrylonitrile Standard (§ 1910.1045) would require semiannual monitoring if employee exposures were at or above the AL, and quarterly monitoring if these exposures were above the PEL. OSHA estimates that a chemical technician, earning $24.68 per hour, requires 30 minutes (0.5 hour) to obtain and analyze each charcoal-sampling tube, and that each exposure monitoring sample represents the exposures of 2 employees (*i.e.*, on average, there are two employees involved in the same or similar tasks).[10]

The revision from quarterly to semiannual monitoring would save 282 burden hours and $6,947. The revision from monthly to quarterly monitoring would save 628 burden hours and $15,499. Thus, revision of the Acrylonitrile Standard would reduce total annual burden by 910 hours and $22,446.

G. Alternative Control Methods for Class I Asbestos Removal (§ 1915.1001(g)(6)(iii) and § 1926.1101(g)(6)(iii))

OSHA is proposing to delete provisions in OSHA's Asbestos Standards for shipyard employment and for construction (§ 1915.1001, paragraph (g)(6)(iii), and 1926.1101, paragraph (g)(6)(iii), respectively) that require that employers submit, to the Directorate of Technical Support, alternative control

[9] This standard does not specify an action level, so employers must continue to monitor employee DBCP exposures on a continuing basis. See section O (''Additional Issues for Comment'') of this Summary and Explanation for a discussion of this issue.

[10] Supporting Statement for the Information Collection Requirements of the Acrylonitrile (AN) Standard (29 CFR 1910.1045), OMB# 1218–0126 (2000), p. 16.

methods used to perform Class I asbestos work. OSHA believes that this requirement is unnecessary because the Agency can obtain this information from the public through an advanced notice of proposed rulemaking. Current OSHA regulatory policy requires that paperwork provisions such as this requirement demonstrate a benefit to employees or serve some other useful regulatory purpose.

To submit alternative control methods to the Directorate of Technical Support, OSHA estimates would require 1 hour and cost $39. These estimates are based on the assumption that OSHA would receive 7 notifications from employers who choose new or modified control technology to reduce exposure in Class I asbestos for shipyards. A manager, earning $38.92 per hour, would spend on average 10 minutes to develop and transmit the information to the Agency for each employer. Thus removing this requirement would result in annual cost savings of $39.

For the Asbestos Standard for construction, OSHA again assumes the Agency would receive 7 notifications from employers who choose new or modified control technology to reduce exposures in Class I asbestos work. OSHA estimates a manager, earning $38.92 an hour, would need 10 minutes to develop and transmit the information to OSHA. Thus, 1 burden hour would be spent, at a cost of $39, to submit alternative method information to OSHA.

Total annual savings of $78 would result from deleting these two asbestos-related provisions, since the information would no longer have to be submitted.

H. Evaluating Chest X-rays Using the ILO U/C Rating (§ 1910.1018(n)(2)(ii)(A) and § 1910.1029(j)(20(ii))

OSHA is proposing to amend paragraph (n)(2)(ii)(A) of the Inorganic Arsenic Standard (§ 1910.1018) and paragraph (j)(2)(ii) of the Coke Oven Emissions Standards (§ 1910.1029); these provisions require that employees' chest x-rays receive an International Labor Office UICC/Cincinnati (ILO U/C) rating. Subsequent to the promulgation of these provisions, the Agency received information from two physicians that the ILO U/C rating is not suitable to evaluate chest x-rays for lung cancer. Based on this information, OSHA believes that the ILO U/C rating may not be a suitable method to use in evaluating chest x-rays for lung cancer. Therefore, the Agency is proposing to remove the ILO U/C rating requirements specified in the Inorganic Arsenic and Coke Oven Emissions Standards, thereby permitting the examining physician to determine the most effective procedure for evaluating these chest x-rays. Deleting the ILO/UC rating would provide cost savings since it allows the examining physician to determine the most effective procedure for evaluating chest x-rays. However, the Agency has not calculated the value of such savings.

I. Signed Medical Opinions (§ 1910.1001(l)(7)(i), § 1910.1027(l)(10)(i), and § 1926.1127,(l)(10)(i))

Paragraph (l)(7)(i) of the Asbestos Standard (§ 1910.1001) and paragraph (l)(10)(i) of the Cadmium Standards for both general industry (§ 1910.1027) and construction (§ 1926.1127), require that the examining physician sign the written medical opinion provided as part of the medical surveillance requirements of these standards. The Preamble to the Cadmium standards states that ''the requirement that the physician sign the opinion is to ensure that the information that is given to the employer has been seen and read by the physician and that the physician has personally determined whether the employee may continue to work in cadmium-exposed jobs'' (57 FR 42366). No other substance-specific standard promulgated by OSHA requires a signed medical opinion.

The Agency believes that the requirement to sign a medical opinion written by a physician is unnecessary, precludes electronic transmission of the opinion from the physician to the employer, and provides no benefit to employees. Accordingly, OSHA is proposing to remove this requirement from these paragraph.

Removal of the requirement that a physician sign the written medical opinion provided as part of the medical surveillance requirement of these standards would provide more flexibility, but does not appear to provide any significant savings in time or burden for most employers.

J. Semiannual Medical Examinations (§ 1910.1017(k)(2)(i), § 1910.1018(n)(3)(ii), and § 1910.1029(j)(3)(i))

Three revisions geared toward reducing burdens are proposed for semiannual medical examinations: changing the requirement to an annual exam requirement for the Vinyl Chloride, Arsenic, and Coke Oven Standards. This analysis presents the burden hours and costs associated with the current provisions and then presents estimates of cost savings of the proposed revisions.

The proposed revision of the semiannual requirement for medical exams in the Vinyl Chloride Standard § 1910.1017(k)(2)(i) to an annual one (for employees working in vinyl chloride or polyvinyl manufacturing for 10 years or longer) would generate annual cost savings in several ways: less employees' time; fewer medical exams; and less clerical time providing the physicians' opinions to the affected employees and maintaining medical records.

Based on estimates in the ICR of the number of facilities, the number of employees per facility, and the distribution of employee exposures, OSHA estimates that 890 burden hours are incurred for medical surveillance under the semiannual examination requirement, with 183 employees monitored twice a year for two hours and 79 employees once a year for two hours at a cost of $16,376 (890 hours × $18.40, the wage rate of a production worker). With annual examinations, OSHA estimates that 324 burden hours would be required, as 262 employees would be monitored only once a year, taking two hours. The cost would be $9,642 (524 hours × $18.40). Annual savings of $6,734 would result.

The revision from semiannual to annual medical exams would result in annual savings of $23,790 in the cost of the medical exams themselves, at $130 per exam, as 183 employees would have only one, as opposed to two, medical exams per year. The change in frequency from semiannual to annual medical exams also reduces the number of hours of clerical time required from 76 to 45, resulting in annual savings of $539.

When annual savings are combined for the cost of employees' time ($6,734), medical exams ($23,790), and clerical costs of medical records ($539), the revision of the Vinyl Chloride Standard generates annual savings of $31,064. Thus, revision of the Vinyl Chloride Standard results in reduced burden hours and substantial annual cost savings.

The proposed rule also revises the semiannual medical exam requirement in the Arsenic Standard, § 1910.1018(n)(3)(ii), for employees who are 45 years old or older with 10 or more years of exposure to Inorganic Arsenic (IA) above the AL. Based on the ICR, the burden for medical surveillance was estimated to be 5,317 hours. OSHA assumes each exam would take one hour and forty minutes and that 50 percent of the 1,900 employees would require two examinations per year, 50 percent of 1,990 employees would undergo only one exam per year, and an

additional 10 percent would be subject to one exam per year. The cost of the employees' time would be $97,838 (5,317 hours × $18.40 hourly wage rate). Requiring only annual medical exams would result in 3,656 burden hours. The cost of the employees being away from the job would be $67,264 (3,565 hours × $18.40 per hour). Thus, replacing semiannual medical exams by annual medical exams would result in annual savings of 1,661 burden hours and $30,574.

The change in frequency from semiannual to annual contributes $129,350 in annual cost savings for the medical exams themselves, at $130 per exam. Semiannual medical exams cost $413,920 while annual medical exams would cost an estimated $284,570. In addition, the clerical costs of medical records would drop by $4,313 ($13,803–$9,489). Total annual savings resulting from revision of the Inorganic Arsenic Standard would be $164,238 ($30,574 + $4,313) and would consist of savings in costs of employees' time, medical exams, and clerical time for medical records.

The proposed rule revises the semiannual medical exams requirement except for the urinary cytology examination, to annual medical exams in the Coke Oven Standard, § 1910.1029(j)(3)(i), for employees who are 45 years of age or older with five or more years of exposure in regulated areas. However, these employees still receive semiannual urinary cytology examinations. The proposed revision would generate annual cost savings in employees' time, medical exams, and physicians' medical opinions. Based on the ICR, medical exams currently require 14,903 burden hours as 84 percent of the 4,600 employees who work in regulated areas require semiannual medical exams, 16 percent require an annual medical exam, and 10 percent require an additional medical exam per year. Each exam requires an employee to be away from his or her job for one hour and 40 minutes, at $18.40 per hour, for a total annual cost of $274,217. After the proposed revision, annual medical exams and semiannual urinary cytology exams would require 12,005 burden hours at a cost of $220,893. Cost savings in employees' time would thus be $53,323.

At a cost of $130 per medical exam and $50 for urinary cytology exams per employee, replacing semiannual medical exams (estimated cost of $1,425,384) with annual medical exams plus semiannual urinary cytology exams (estimated cost of $1,126,264) would result in annual cost savings of $309,120. There would be no savings in clerical costs of medical records.

OSHA estimates that revision of the Coke Oven Standard would generate total annual savings of $362,443 when the savings in the costs of employees' time and medical exams.

K. Notification of Regulated Area (§ 1910.1003(f)(1)(i), 1910.1017(n)(1)(i), 1910.1018(n)(2)(i), and 1910.1045(d)(1)(1))

The proposed rule would delete the ''13 carcinogens'' provision, § 1910.1003(f)(1), that requires employers to notify the nearest OSHA Area Director of the established of Regulated Areas. Deleting this provision results in savings in burden hours and associated costs. As in the ICR, OSHA assumes that changes in operation requiring a report to the nearest OSHA Area Director currently occur once a year per facility and require one hour each of managerial and clerical time, a total of two hours per employer, to report the necessary information. OSHA estimates that 97 employers would be affected. Burden hours are thus estimated to total 194 hours to report the information. The cost is estimated to be $5,457 (97 employers × ($38.92 × 1 hour + $17.34 × 1 hour)), where $38.92 is the wage rate of a manager and $17.34 is the wage rate of a clerical worker. Thus, savings due to deleting this provision would be 194 burden hours and $5,457.

The proposed rule would eliminate the vinyl chloride provision, § 1910.1017(n)(1), that requires employers to notify the nearest OSHA Area Director of the establishment of Regulated Areas. Based on the ICR, the Agency estimates that 13 new regulated areas are established each year, and that a manager, at an hourly rate of $38.92, takes 15 minutes (0.25 hour) to notify the Area Director of the address and the location of the establishment, and the number of employees in a new regulated area. Thus, for new regulated areas, OSHA estimates a current burden of 3.25 hours at a cost of $126.

For existing facilities, OSHA assumes that each employer experiences one change in a regulated area each year, and that a supervisor requires 10 minutes (0.17 hour) to inform the Area Director of this change. OSHA estimates that there are 80 facilities, resulting in 14 burden hours and a cost of $529 (14 burden hours × $38.92).

Total burden of the current rules, for new and existing facilities, is 17 hours, costing $656. The proposed revision would, thus, save 17 hours and $656.

The proposed rule would delete the requirement in the Inorganic Arsenic Standard, 1910.1018(d)(1), that employers notify the nearest OSHA Area Director of the establishment of Regulated Areas. An OSHA report titled ''Sampling Activity by Substance'' determined that 14.1 percent of establishments had Inorganic Arsenic exposures that exceeded the PEL. Based on the Agency's estimate that 42 facilities are covered by the standard, six facilities would have employees with IA exposures that exceed the PEL (14.1% × 42 = 6). OSHA assumes that these six employers have already notified the Agency about establishing regulated areas; therefore, only significant changes to existing regulated areas or establishments of new regulated areas must be reported to OSHA. The Agency assumes that one significant change occurs in, or a new regulated area is added to, each of these facilities annually, and that a manager, earning $38.92 an hour, will take 30 minutes (0.5 hours) to notify the Agency of the significant change or addition. Thus, OSHA estimates it would require three burden hours for six employers to notify the Area Director about establishment of regulated areas. Estimated cost would be $117 (three burden hours × $38.92 an hour). By deleting this provision, savings of three burden hours and $117 would be realized.

The proposed rule would delete the provision in the Acrylonitrile Standard, § 1910.1045 (d)(1), that requires employers notify the nearest OSHA Area Director of the establishment of Regulated Areas. Since there are no new establishments, OSHA assumes that employers will not establish new regulated areas during this clearance period, and estimates that each of the 23 facilities will make one significant change annually in a regulated area. The Agency estimates that reporting a significant change to the nearest OSHA Area Office currently takes a manager 0.5 hour and a clerical worker 0.5 hour each, for a total of one hour for each of the 23 facilities. Thus, it costs $647 for the 23 facilities to report a significant change, at $38.92 an hour for a manager and $17.34 an hour for a clerical. Savings due to deleting this provision would thus be 23 burden hours and $647.

L. Reporting Emergencies and Incidents (§ 1910.1017(n)(2) and 1910.1045(d)(2)(i))

The proposed rule would delete the provision in the Vinyl Chloride Standard, § 1910.1017(n)(2), that requires employers to report emergencies, and available facts regarding each emergency, to the nearest OSHA Area Director. On request of the

Area Director, the employer must submit additional information in writing describing the nature and extent of employee exposures, and measures taken to prevent similar emergencies in the future. OSHA estimates that each employer experiences one reportable emergency per year, and that a manager and a secretary will each spend five hours, for a total of 10 hours, reporting the emergency. OSHA assumes there are 80 affected employers; a manager and a secretary would each spend five hours to report an emergency for a total of 800 burden hours. The cost to the employers would be $22,504 (80 employess × ($38.92 × 5 hours + $17.34 × 5 hours)), since a manager earns $38.92 an hour and a secretary earns $17.34 an hour. Hence, there would be savings of 800 burden hours and $22,503 by deleting this provision.

The proposed rule would delete the provision in the Acrylonitrile Standard, § 1910.1045(d)(2), that requires employers to report an emergency to OSHA within 72 hours and to provide additional information in writing to the nearest OSHA Area Office if requested to do so. OSHA estimates that two emergencies will occur in each facility annually, and that a professional and a secretary each requires one hour for a total of two hours to compile and report the necessary information for each emergency. OSHA estimates 92 burden hours would be attributed to this provision because 23 facilities would report two emergencies per year and a manager and a secretary would each spend one hour to compile and report the necessary information. The cost of this provision would be $2,588, since a manager earns $38.92 per hour and a secretary earns $17.34 an hour. Savings due to deleting this requirement would be 92 burden hours, worth $2,588.

M. Semiannual Updating of Compliance Plans (§ 1910.1017(f)(3), 1910.1018(g)(2)(iv), 1910.1025(e)(3)(iv), 1910.1029(f)(6)(iv), 1910.1044(g)(2)(ii), 1910.1045(g)(2)(v) and 1926.62(e)(2)(v))

The Agency's substance-specific standards typically require employers to develop compliance plans to meet the exposure-control objectives of the standard. Most of these standards specify that employers must update these plans at least annually, and OSHA believes that annual updating is sufficient to ensure the continued effectiveness of the plans. However, several older substance-specific standards promulgated by the Agency require semiannual updating, including: Vinyl Chloride (§ 1910.1017, paragraph (f)(3)), Inorganic Arsenic (§ 1910.1018, paragraph (g)(2)(iv)); Lead (§ 1910.1025, paragraph (e)(3)(iv)); Coke Oven Emissions (§ 1910.1029(f)(6)(iv)); 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044, paragraph (g)(2)(ii)); Acrylonitrile (§ 1910.1045, paragraph (g)(2)(v)); and Lead in Construction (§ 1926.62, paragraph (e)(2)(v)).

A review of the Preambles to OSHA's substance-specific standards found no compelling argument that updating compliance plans semiannually provides employees with more health protection than updating these plans annually. Therefore, the Agency is proposing to revise its older substance-specific standards to require annual, instead of semiannual, updating of compliance plans. OSHA believes that the proposed revisions would make this requirement consistent across its standards without diminishing employee protection. Accordingly, the proposal would eliminate a significant paperwork requirement that has no demonstrated benefit to employees. The following discussion estimates the cost savings of the proposed revisions.

The proposed rule revises the Vinyl Chloride Standard to require that employers update compliance plans at least annually, instead of semiannually. As in the ICR, the Agency estimates that semiannual updates require 480 burden hours (20 facilities, each needing eight hours from a manager and four hours from a secretary) to update the compliance plans, at a cost of $15,229. On average, a manager earns $38.92 an hour while a secretary earns $17.34 an hour. Annual updates on the other hand, would require 240 burden hours at a cost of $7,614. Thus, revising the standard to allow for annual updates of compliance plans instead of semiannual updates would result in savings of $7,614.

Modifying the Inorganic Arsenic Standard (§ 1910.1018) to require that employers update compliance plans at least annually likewise would reduce burden hours and cost. OSHA estimates there are six employers affected by this standard and that a manager and a secretary need eight hours and four hours, respectively, to update the compliance plans. With semiannual updates, the standard would require 144 burden hours at a cost of $4,569. Revising the standard to require annual compliance updates would entail 72 burden hours at a cost of $2,284, thereby resulting in savings of $2,284.

The proposed revision of the Lead Standard for General Industry (§ 1910.1025(e)(3)(iv)) would reduce the frequency for updating the compliance plan from semiannually to annually for areas with exposures over the PEL. OSHA's information on areas over the PEL in general industry is relatively old and the standard is almost 25 years old. Therefore, a substantial amount of time has gone by to achieve exposures below the PEL. Accordingly, OSHA has not assigned a cost saving for this provision at this time. Instead, OSHA requests comments on the approximate number of general industry lead facilities that still have areas over the PEL. Based on such comments and other information OSHA may be able to gather, OSHA will attempt to make a current estimate of the cost savings from this provision.

Revision of the Coke Oven Standard (§ 1910.1029, paragraph (f)(6)(iv)) would allow employers to update their compliance plans annually instead of semiannually. OSHA estimates that each of the 14 plants takes 3 hours to review and update its compliance plan semiannually for a total of 84 burden hours. OSHA estimates that a manager earning $32.92 takes two hours to update the compliance semiannually; and that a clerk earning $17.34 will take one hour semiannually to update the plans. Therefore the cost for the 14 plants to update their compliance plans semiannually is $2,665. Revising semiannual updating to annual the 14 plants would take 42 hours annually costing a total of $1,333. The burden hour savings would be 42 hours and cost saving would be $1,332.

The proposed revision of the 1,2-dibromo-3-chloropropane (DBCP) Standard (§ 1910.1044) would have no cost or burden hours to employers since no U.S. employers currently produce DBCP-based end products.

Revision of the Acrylonitrile Standard (§ 1910.1045, paragraph (g)(2)(v)) would require that employers update compliance plans annually instead of semiannually. OSHA assumes that a manager earning $38.92 an hour would devote 0.5 hour to update a compliance plan at each facility. With semiannual updating of compliance plans, employers would require 23 burden hours at a cost of $895 (23 hours × $38.92). Revision of the standard to require annual updates would lower this to 11.5 burden hours at a cost of $448 (11.5 × $38.92). Savings due to this revision would thus be $448.

The proposed revision of the Lead in Construction Standard (§ 1926.62, paragraph (e)(2)(v)) would require employers to update compliance plans annually instead of semiannually. Based on the Lead In Construction Paperwork Package, which in turn drew upon the Economic Analysis for the current rule, OSHA estimates it requires 216,344 burden hours at a cost of $8,419,313 (216,272 hours × $38.92) to update compliance plans semiannually.

Revising the standard to require annual updates would cut the burden in half, to 108,172 hours at a cost of $4,209,657 (108,172 hours × $38.92). Thus, the savings due to changing from semiannual to annual compliance updates would be $4,209,657.

N. Notifying Employees of Their Exposure Monitoring Results (§ 1910.1017(n)(3), 1910.1018(e)(5)(i), 1910.1025(d)(8)(i), 1910.1027(d)(5)(i), 1910.1029(e)(3)(i), 1910.1043(d)(4)(i), 1910.1044(f)(5)(i), 1910.1045(e)(5)(i), 1926.62(d)(8)(i), and 1926.1127(d)(5)(i))

Many of OSHA's substance-specific standards require employers to notify employees of their exposure monitoring results. However, the standards specify several different methods for providing this notice. Accordingly, the standards state that an employer must provide such notification to employees individually in writing or by posting the results in a readily accessible location, or both. In addition, the maximum period for notifying employees of their exposure monitoring results after the employer receives them varies across the standards. These periods range from ''as soon as possible'' to 20 working days after receipt of the monitoring results.

A review of the Preambles to each of the above standards indicates that the final choice of notification method and maximum period for notification was a matter of convenience and feasibility; none of the Preambles provided objective evidence that the final requirements were most effective in protecting employees. In view of this finding, OSHA believes that making the requirements consistent among the standards would reduce confusion and facilitate compliance without diminishing employee protection. As a result, the Agency is proposing to revise the standards by requiring employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. Although the posting option would reduce employers' paperwork burden to some extent, they must still maintain individual exposure monitoring records for employees under §§ 1910.1020, 1915.1020, and 1926.33, OSHA's records-access standards for general industry, shipyard employment, and construction, respectively. Thus, employees could still get subsequent access to their exposure monitoring results.

OSHA is proposing to standardize the period of time for notifying employees of their exposure monitoring results after the employer receives them across 20 pertinent standards. Currently, the notification period ranges from ''as soon as possible'' to 20 working days after receipt of the monitoring results. The Agency is proposing to standardize the notification period to 15 days for general industry and no later than 5 days for construction and shipyards. Making these requirements consistent will reduce confusion and facilitate compliance with the provisions. However, it will not result in any significant cost savings.

OSHA assumes that the employers will choose to post the employees' results in a readily accessible location for all the standards that give the option of providing the results individually in writing or by posting. This would generate savings in burden hours and costs.

The proposed rule would revise the Vinyl Chloride Standard (§ 1910.1017 (n)(3)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. Based on the ICR, under the present standard for exposure above the AL, but below the PEL, 42 burden hours are required at a cost of $727 as 131 employees would be notified quarterly by a secretary earning $17.34 an hour who would spend 5 minutes per notification. For exposures above the PEL, 126 burden hours at a cost of $2,181 are required, as the same number of employees would be notified monthly by the secretary. Additional monitoring involves another 6 burden hours, at a cost of $111. Thus, the present Vinyl Chloride Standard requires a total of 174 burden hours and a cost of $3,019.

With the revised standard, for exposure above the AL but below the PEL, 3 burden hours at a cost of $55 would be incurred as a secretary of each of 20 employers would post monitoring results semiannually at a readily accessible location. For exposure above the PEL, a secretary would quarterly post monitoring results at 20 facilities in a readily accessible location, requiring 6 burden hours at a cost of $111. Additional monitoring would require 6 burden hours at a cost of $111. Thus, the revised standard would require 15 burden hours at a cost of $277. Cost savings would amount to $2,741.

The proposed rule revises the Inorganic Arsenic Standard (§ 1910.1018(e)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

The present Arsenic Standard requires employers to notify employees individually in writing of their exposure monitoring results. As in the Inorganic Arsenic Paperwork Package, OSHA estimates that 7,400 employees are exposed to IA, 14.1 percent or 1,043 of these are exposed above the PEL and will be monitored quarterly, 12.8 percent or 947 of these employees are exposed above the AL but below the PEL and will receive semiannual monitoring, while the employers must provide 10 percent or 740 of these employees with the results obtained to meet the additional monitoring requirement. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) to prepare each notification. Thus, 545 burden hours estimated to cost $9,444 are attributed to the present Inorganic Arsenic Standard.

With the revised standard, employers would have to post monitoring results in a readily accessible location, which is cheaper than writing to employees individually. For estimating the burden, the assumptions would remain the same as under the present standard except employers or facilities would post monitoring results. OSHA estimates there are 42 facilities: 14.1 percent or 6 of these have employees exposed above the PEL and will be monitored quarterly; 12.8 percent or 5 of these have employees that are exposed above the AL but below the PEL and will be monitored semiannually, and an additional 10 percent or 4 facilities will be monitored yearly. Thus, the revised standard would require 3 burden hours at a cost of $51. Cost savings due to changing from writing employees individually to employers posting monitoring results in a readily accessible location would amount to $9,393.

The proposed rule revises the Lead General Industry Standard (§ 1910.1025(d)(8)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employees would post the employees' results in a readily accessible location.

Currently, monitoring is required initially to determine if any employees are exposed to lead at or above the action level, and every six months if employees are exposed above the AL but below the PEL and quarterly if employees are exposed to lead above the PEL. OSHA assumes zero burden hours for quarterly monitoring based on the

assumption in the paperwork burden analysis that no industry sectors have working conditions in which employees are being exposed above the PEL. The Agency has estimated that about 11,508 employees would receive initial monitoring and 377,859 employees may be exposed to lead at levels between the AL and the PEL, which would require periodic monitoring at six-month intervals. OSHA estimates that a secretary earning $17.34 an hour will require five minutes (.08 hour) to prepare each of 767,226 employee notifications (11,508 initial notifications and 377,859 employees × 2 semiannual notifications).

Developing 767,226 employees monitoring results to comply with the present Lead Standard will take 61,378 burden hours, at a total cost of $1,064,296.

Under the revised standard 9,997 burden hours, at a cost of $173,001, would be required for employee notification (secretaries at each of the 62,357 employers, spending five minutes each, at $17.34 per hour, to post initial and semiannual monitoring results). Cost savings would amount to $891,293.

The proposed rule would revise the Cadmium General Industry Standard (§ 1910.1027(d)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. As posting the monitoring results is cheaper than individually writing employees, OSHA assumes the employers would prefer to post the monitoring results.

The present standard requires employers to notify employees individually in writing and to post in a centralized location their exposure monitoring results. As in the Cadmium General Industry Paperwork Package, the Agency estimates that 71,306 employees may need periodic monitoring when exposed to cadmium above the AL. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) semiannually to individually inform the employees in writing of exposure monitoring results and to also post a copy of the results in a centralized location. Included in this five minutes is the time to maintain the record as required in paragraph (n)(1). The Agency also estimates that the 143 additional samples will occur in 143 plants. Thus, 11,420 burden hours would be required at a cost of $198,030 as 71,306 employees are notified individually in writing and 143 plants post notices of the employees' exposure monitoring results in centralized locations.

Under the revised standard, 8,517 burden hours at a cost of $147,685 would be required (secretaries at each of the 53,161 employers, and for posting 143 additional samples spending five minutes, at $17.34 per hour, to post monitoring results). Cost savings due to changing from individually writing employees and posting notices in centralized location to employers posting notices in a readily accessible location would amount to $50,341.

The proposed rule would revise the Coke Oven Emissions Standard (§ 1910.1029 (e)(3)(i)) to require employers to provide employees with their monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employees would prefer to post the employees' results in a readily accessible location.

The present standard requires employers to notify employees individually in writing to their exposure monitoring results. As in the ICR, the Agency estimates that 4,600 employees receive exposure measurements (i.e., are ''covered employees'' because they work in regulated areas). These measurements include 184,400 quarterly measurements (4,600 employees × 4 measurements) and 230 resamplings (5% of 4,600 employees), for a total of 18,630 samples. The agency also assumes that a secretary, at a wage rate of $17,34 per hour, will take 5 minutes (.08 hour) to notify each employee of his or her sampling results. Thus, 1,490 burden hours would be required at a cost of $25,844 at 4,830 employees would be notified individually in writing of their exposure monitoring results.

With the revised standard, 5 burden hours at a cost of $79 would be attributed to secretaries at each of the 14 employers who earn $17.34 per hour and would spend five minutes each to post monitoring results at a readily accessible location. Cost savings would amount to $25,765.

The proposed rule revises the Cotton Dust Standard (§ 1910.1043(d)(4)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

OSHA estimated the numbers of exposed employees and the number of facilities in the industry by utilizing data from Employment and Earnings and County Business Patterns. The Agency estimates that 49,628 employees would be notified in writing of their exposure monitoring results. OSHA estimates that a secretary, earing $17.34 per hour, will take 5 minutes (.08 hour) to prepare each notification. Thus, 3,970 burden hours are required at a cost of $68,844 as 53,938 employees are notified individually in writing of their exposure monitoring results.

Under the revision, 43 burden hours at a cost of $742 would be required (a secretary at each of the 535 plants, earning $17.34 per hour, would spend five minutes (.08 hour) to post monitoring results. Cost savings would amount to $68,102.

The proposed rule would revise the 1,2-Dibro-3-Chloropropane (§ 1910.1044(f)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. No cost or burden hours accrue to employers under this standard since OSHA has determined that no U.S. employers currently produce DBCP or DBCP-based end-use products.

The proposed rule would revise the Acrylonitrile Standard (§ 1910.1045(e)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

The Agency estimates that under the present standard 923 employees must be informed of sampling results in writing. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) to prepare each notification. Thus, 485 burden hours are required at a cost of $8,415.

Under the revision, 9 burden hours at a cost of $160 would be attributed to secretaries at each of the 23 plants, earning $17.34 per hour, spending five minutes (.08 hour) each to post quarterly monitoring results and one additional monitoring result. Cost savings would amount to $8,255.

The proposed rule would revise the Lead in Construction Standard (§ 1926.62(d)(8)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

As in the Lead in Construction Paperwork Package, the Agency estimates that under the present standard, 177,194 employees are notified two times a year in writing of their exposure monitoring results. OSHA estimates that a secretary, earning $17.34 per hour, will take 6 minutes (.10 hour) to prepare each notification. Thus, 38,678 burden hours are required at a cost of $670,671.

The revised standard would require that employers post monitoring results at readily accessible locations at each facility. Thus, 10,185 burden hours at a cost of $176,608 would be required in Lead in Construction as secretaries of each of 147,073 firms, earning $17.34 per hour, would spend six minutes (.10 hour) to post monitoring results two times a year. Cost savings would amount to $494.063.

The proposed rule revises the Cadmium in Construction Standard (§ 1926.1127(d)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

The Agency estimates that under the present standard 7,500 employees need monitoring when exposed to cadmium above the AL. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) to individually inform the employees in writing of exposure monitoring results and to also post a copy of the results in a centralized location. The Agency assumes that the time associated with posting a copy of the result is minimal after already completing the individual notification; thus no additional time is assumed. Included in this five minutes is the time to maintain the record as required in paragraph (n)(1). The present standard requires 1,720 burden hours at a cost of $32,044.

With the revised standard, 280 burden hours at a cost of $4,855 would be required (secretaries at 1000 employers, earning $17.34 per hour, would spend 5 minutes each to post monitoring results. The revision would result in cost savings of $27,189.

V. Costs, Economic Feasibility, and Technological Feasibility

The analysis described above indicates that the cost savings associated with this rule are $6.7 million per year. Since this is far less than $100 million, the proposed rule will not be economically significant under Executive Order 12866. The proposed rule is technologically feasible because it always involves reducing requirements on employers. Because this rule provides only cost savings, and no costs to affected employers, it is economically feasible.

VI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of the proposed rule to determine if they would have a significant economic impact on a substantial number of small entities. As indicated in section IV (''Economic Analysis'') of this preamble, the proposed rule is expected to reduce compliance costs and regulatory burden for all employers, large and small. The reduction in compliance costs is under $100 million. Accordingly, the Agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Environmental Impact Assessment

OSHA has reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). The Agency finds that the revisions included in the proposal do not directly involve the control of hazardous materials. Therefore, the proposed rule would have no additional impact on the environment, including no impact on the release of materials that contaminate natural resources or the environment, beyond the impact imposed by the existing requirements these proposed revisions would amend.

VIII. OMB Review Under the Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3507(d), and 5 CFR 1320.11) requires Federal agencies to submit collections of information (i.e., on provisions requiring paperwork) contained in proposed rules to the Office of Management and Budget (OMB) for review. PRA–95 defines a ''collection of information'' to mean, ''[O]btaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency regardless of form or format.'' (44 U.S.C. 3502(3)(A)). The paperwork burden-hour estimate and cost analysis that an agency submits to OMB is termed an ''Information Collection Request'' (ICR).

The proposed revisions that reduce paperwork burden hours and/or costs are contained in the following 12 ICRs currently approved by OMB, (OMB approval numbers are in parenthesis): asbestos in construction (1218–0134); asbestos in shipyards (1218–0195); 13 carcinogens (1218–0085); vinyl chloride (1218–0010); inorganic arsenic (1218–0104); lead in general industry (1218–0092); lead in construction (1218–0189); cadmium in general industry (1218–0185); cadmium in construction (1218–0186); coke over emissions (1218–0128); cotton dust (1218–0061); and acrylonitrile (1218–0126).

For six ICRs, the proposed revisions do not affect burden hours or costs. The six ICRs are: Temporary Labor Camps (1218–0096); 1,2-dibromo-3-chloropropane (1218–0101); 1,3-Butadiene (1218–0170); Asbestos in General Industry (1218–0133); Formaldehyde (1218–0145); Methylenedianline in construction (1218–0183).

This proposal will result in a 207,892 burden hour reduction, from 357,749 hours to 149,857 hours. The paperwork burden hour reduction estimates may differ from the Preliminary Economic Analysis as a result of rounding.

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the Agency is providing the following information for the ICRs having reductions in burden hours and costs resulting from the proposed revisions: Title and section number of the standard covered by the ICR; OMB control number; a brief description of the proposed collection-of-information revisions, including changes in frequency; total number of respondents being impacted by the revision; and an estimate of the reduced annual reporting (hour) and cost burdens for the information-collection requirements in the standard.[11] The costs below account for only capital, maintenance, and purchasing revision. Hourly wage rate savings are fully discussed in the preliminary economic analysis section of this proposal.

The Agency has a particular interest in comments on the following issues regarding the proposed revisions to the paperwork requirements:

- The extent to which the proposed revisions to the information-collection requirements are necessary for the proper performance of the Agency's functions, including the usefulness of the information;

[11] In determining these reporting and cost burdens, the Agency considers, as appropriate, the time for reviewing instructions, gathering and maintaining the required data, and completing and reviewing the collection of information.

• The accuracy of the Agency's estimate of the burden (time and costs) of the proposed revisions, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

Accordingly, OSHA is proposing to revise the following ICRs in the manner described:

Title: Temporary labor camps (§ 1910.142).

OMB control number: 1218–0096.

Proposed revision: Delete the requirement for camp superintendents to sue a telegram or telephone when notifying local health authorities of the outbreak of specific illnesses and medical conditions among employees (§ 1910.142 (1)(2)).

Number of respondents: 838.

Burden hours and costs (operation and maintenance): The proposed revision does to affect burden hours or costs.

Title: Asbestos in General Industry (§ 1910.1001).

OMB control number: 1218–0133.

Proposed revisions: Remove the requirement that the physician sign the physician's written opinion (§ 1910.1001(l)(7)(i)).

Number of respondents: 233.

Burden hours and costs (operation and maintenance): The proposed revision does not affect burden hours or costs.

Title: 13 carcinogens (§ 1910.1003).

OMB control number: 1218–0085.

Proposed revisions: Remove the requirements that employers notify OSHA area directors of regulated areas (§ 1910.1003(f)(1)) and the incidental release of a specified carcinogen (§ 1910.1003(f)(2)).

Number of respondents: 97.

Burden hours and costs (operation and maintenance): Removing these two provisions result in a burden hour reduction of 1,164 hours. There are no operation and maintenance costs associated with these revisions.

Title: Vinyl chloride (§ 1910.1017).

OMB control number: 1218–0010.

Proposed revisions: Lower the frequency of employee exposure monitoring from monthly to quarterly (§ 1910.1017(d)(2)(i)), and from quarterly to semiannually (§ 1910.1017(d)(2)(ii)); reduce the frequency of updating compliance plans from semiannually to annually (§ 1910.1017(f)(3)); reduce the administration of medical examinations from semiannually to annually (§ 1910.1017(k)(2)(i)) (The reduction in the number of medical examinations results in fewer instances that employers must provide a copy of a physician's statement to the employee (§ 1910.1017(k)(4)) and fewer medical records (§ 1910.1017(m)(iii)); remove the requirement that employers notify OSHA of regulated areas (§ 1910.1017(n)(1)) and of emergencies (§ 1910.1017(n)(2)); and allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 10 working days to 15 working days (§ 1910.1017(n)(3)).

Number of respondents: 80.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 1,938 burden hours. Less frequent exposure monitoring results in a cost savings of $120,520. The reduction in the number of medical examinations results in a cost savings of $133,790.

Title: Inorganic arsenic (§ 1910.1018).

OMB control number: 1218–0104.

Proposed revisions: Remove the requirement that employers notify OSHA of regulated areas (§ 1910.1018(d)(1)); allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1018(e)(5)(i)); reduce the frequency of updating compliance plans from semiannually to annually (§ 1910.1018(g)(2)(iv)); reduce the administration of medical examinations from semiannually to annually (§ 1910.1018(n)(3)(ii)). (The reduction in the number of medical examinations results in fewer instances that employers must provide information to the physician (§ 1910.1018(n)(5)) and fewer instances that employers must provide a copy of the physician's written opinion to the employee (§ 1910.1018(n)(6)). Also fewer medical records (§ 1910.1018(q)(2)) will be maintained.)

Number of respondents: 42.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 2,517 burden hours. The reduction in the number of medical examinations results in a cost savings of $124,375.

Title: Lead in general industry (§ 1910.1025).

OMB control number: 1218–0092.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1025(d)(8)(i)); reduce the frequency of up-dating compliance plans from semi-annually to annually (§ 1910.1025(e)(3)(iv)).

Number of respondents: 61,535.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 51,401 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: Cadmium in general industry (§ 1910.1027).

OMB control number: 1218–0185.

Proposed revisions: Remove the requirement that the physician's written opinion be signed (§ 1910.1027(l)(10)(i)); allow employers to either post or individually inform employees of their exposure monitoring results (§ 1910.1027(d)(5)(i)). (The current exposure monitoring notification requirement requires employers to both post and individually inform employees of their exposure monitoring results.)

Number of respondents: 53,161.

Burden hours and costs (operation and maintenance): Allowing employers to notify employees by posting employee monitoring results reduces the burden by 2,902 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: Coke oven emissions (§ 1910.1029).

OMB control number: 1218–0128.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1029(e)(3)(i)); remove the requirement for semi-annual medical examinations, except for urinary cytology examinations, for employees 45 years of age or older, or for employees with five or more years employment in a regulated area (§ 1910.1029(j)(3)(i)); reduce the frequency from semiannual to annual review of the employers compliance plan.

Number of respondents: 14.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 4,425 burden hours. the reduction in the number of medical examinations results in a cost savings of $502,320.

Title: Cotton dust (§ 1910.1043).

OMB control number: 1218–0061.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee and reduce the time for employers to provide exposure-monitoring results to employees from 20 working days to 15 working days (§ 1910.1043(d)(4)(i)).

Number of respondents: 535.

Burden hours and costs (operation and maintenance): The proposed revision results in a reduction of 3,927 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: 1,2-Dibromo-3-chlolropropane (DBCP) (§ 1910.1044).

OMB control number: 1218–0101

Proposed Revisions: Remove the provision requiring employers to notify OSHA when DBCP is introduced into the workplace (§ 1910.1044 (d)(4)); modify monthly exposure monitoring to quarterly when DBCP exposure is above the PEL and quarterly exposure monitoring to semi-annual when exposures are below the PEL (§ 1910.1044 (f)(3(ii)); extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days and allow employers to inform employees of their exposure monitoring results by posting instead of individually informing employees (§ 1910.1044 (f)(5)(i)) and reduce the frequency of updating compliance plans from semi-annually to at least annually (§ 1910.1044 (g)(2)(ii)).

Number of respondents: 0.

Burden hours and costs (operation and maintenance): There are no establishments that are currently using DBCP; therefore, there are no reductions in burden hours and costs on the public.

Title: Acrylonitrile (AN) (§ 1910.1045).

OMB control number: 1218–0126.

Proposed revisions: Remove the reporting provisions requiring employers to notify OSHA when a regulated area is established (§ 1910.1045 (d)(1)) and report to the OSHA Area Office within 72 hours the occurrence of an emergency (§ 1910.1045 (d)(2)); lower the frequency of employee exposure monitoring from monthly/quarterly/semiannually (§ 1910.1045 (e)(3)(ii) and (e)(3)(iii); extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 days and permit employers to post employee exposure monitoring results (§ 1910.1045 (e)(5)); and, reduce the frequency of updating compliance plans from semiannually to annually (§ 1910.1045(g)(2)).

Number of respondents: 23.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 1,511 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: 1,3 Butadiene (§ 1910.1045).

OMB control number: 1218–0170.

Proposed revisions: Extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1051 (d)(7)(ii).

Number of respondents: 255.

Burden hours and cost (operation and maintenance): The proposed revision does not affect burden hours or costs.

Title: Asbestos in shipyards(§ 1910.1001).

OMB control number: 1218–0195.

Proposed revisions: Extend the maximum time for employers to provide exposure-monitoring results to employees from as soon as possible to 5 working days (§ 1915.1001 (f)(5)(i)); remove the requirement that employers submit their alternative control methods to OSHA (§ 1915.1001(g)(6)(iii)).

Number of respondents: 7

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of burden hour. There are no operation and maintnace costs associated with these revisions.

Title: MDA in Construction (§ 1926.60).

OMB control number: 1218–0183.

Proposed Revisions: Reduce the time for employers must provide exposure-monitoring results to employers from 15 working days to 5 working days (§ 1926.60(f)(7)).

Number of respondents: 66.

burden hours and cost (operation and maintenance): The proposed revision does not affect burden hours or costs.

Title: Lead in construction (§ 1926.62).

OMB control number: 1218–0189.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee (§ 1926.62 (d)(8)(i)); reduce the frequency of updating compliance plans from semi-annually to annually (§ 1926.62 (e)(2)(v)).

Number of respondents: 147,073.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 136,665 burden hours. These are no operations and maintenance cost associated with these revisions.

Title: Asbestos in construction (§ 1926.1101).

OMB control number: 1218–0134.

Proposed revisions: Increase the maximum time for employers to provide exposure-monitoring results to employees from as soon as possible to 5 working days (§ 1926.1101 (f)(5)(i)) and remove the requirement that employers submit their alternative control methods to OSHA (§ 1926.1101 (g)(6)(iii)).

Number of respondents: 7.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 1 burden hour. There are no operation and maintenance costs associated with these revisions.

Title: Cadmium in construction (§ 1926.1127).

OMB control number: 1218–0186.

Proposed revisions: Allow employers to either post or individually inform employees of their exposure monitoring results (§ 1926.1127 (d)(5)(i)). The current exposure monitoring notification requirement requires employers to both post and individually inform employees of their exposure monitoring results. Remove the requirement that the physician's written opinion be signed (§ 1926.1127 (l)(10)(i)).

Number of respondents: 1,000.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 1,440 burden hours. These are no operation and maintenance costs associated with these revisions.

The Agency has submitted a copy of the above ICRs to OMB for their review and approval. Members of the public who wish to provide comments on these proposed revisions must submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20530 (Attention: OSHA Desk Officer).

The Agency will summarize the comments submitted by the public in response to this notice and will include the summaries in its request to OMB for approval for the revisions to the 17 final information collection requests that result from this proposal. These comments will also become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Copies of the individual ICR's detailing the revisions are available for inspection and copying in the OSHA or OMB docket offices. Members of the public may also receive a copy of one, or all of the ICRs, through the mail by contacting Mr. Todd Owen at (202) 639–2444, or electronically via OSHA's Web site on the Internet at *http://www.osha.gov/.*

IX. Unfunded Mandates

OSHA has reviewed the proposed rule in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and Executive Order 12875. As discussed above in section III (''Legal Considerations'') of this preamble, OSHA has preliminarily determined that the proposed rule is likely to reduce the regulatory burdens imposed on public and private employers by the existing requirements these proposed revisions would amend. The proposal would not expand existing regulatory requirements or increase the number of employers who are covered by the existing rules. Consequently, compliance with the proposed rule would require no additional expenditures by either public or private employers. In sum, the proposed rule does not mandate that state, local, and tribal governments adopt new, unfunded regulatory obligations.

X. Federalism

The Agency has reviewed the proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states before taking actions that restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order provides for preemption of state law only when Congress expresses an intent that a Federal agency do so. The Federal agency must limit any such preemption to the extent possible.

With respect to states that do not have occupational safety and health plans approved by OSHA under section 18 of the Occupational Safety and Health Act of 1970 (the ''Act'') (29 U.S.C. 667), the Agency finds that the proposed rule conforms to the preemption provisions of the Act. These provisions authorize OSHA to preempt state promulgation and enforcement of requirements dealing with occupational safety and health issues covered by Agency standards, unless the state has a state occupational safety and health plan approved by the Agency. (See *Gade* v. *National Solid Wastes Management Association,* 112 S.Ct. 2374 (1992).) The provisions of 29 U.S.C. 667 prohibit states without such programs from issuing citations for violations of requirements covered by Agency standards. The proposed rule would not expand this limitation.

Regarding states that have OSHA-approved occupational safety and health plans (''State-plan states''), the Agency finds that the proposed rule complies with Executive Order 13132 because the proposal addresses a problem (i.e., health hazards) that is national in scope. After OSHA adopts final revisions based on this proposal, section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) would not preempt any alternative revisions made by State-plan states if these revisions are at least as affective as the final revisions developed by the Agency from this proposal.

OSHA invites the states to submit comments and information regarding the proposed revisions. In addition to addressing the impact of the proposal on employee protection and employer burden, the Agency requests the states, especially State-plan states, to identify any enforcement issues they believe may result of OSHA adopts the proposed revisions.

XI. State-Plan States

The 24 states and two territories with their own federally-approved occupational safety and health plans must develop revisions that are at least as effective as the final revisions adopted by the Agency from this proposal within six months after OSHA publishes the final rule. These states and territories are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (State and local government employees only), New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

XII. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include comments and data that endorse or support or object to the proposed revisions set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a full public response on the issues involved. See the sections above titled **DATE** and **ADDRESSES** for information on sending these submissions to the Agency. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11, members of the public may request an informal hearing by filing a request as specified above under the section titled **ADDRESSES.** However, section 6(b)(7) of the Occupational Safety and Health Act (''the Act'') in conjunction with the Administrative Procedures Act does not require the Agency to hold a public hearing on proposed revisions involving medical-surveillance or exposure monitoring requirements. Requests for hearings must include the objections to the proposal that warrant a hearing. The party making objections that are part of a hearing request must:

- Include their name and address;
- Ensure that the request has a postmark date no later than December 30, 2002;
- Separately number each objection;
- Specify with particularity the grounds for each objection; and

Include a detailed summary of the evidence supporting each objection that they plan to offer at the requested hearing.

Interested parties may file objections with their comments and they will be fully considered by the Agency. Formal objections pursuant to the preceding paragraph are only required if a party is requesting a hearing.

Submit three copies of written comments to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2350). Commenters may transmit written comments of 10 pages or less by fax to the Docket Office at (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at *http://www.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

Send requests for a hearing to Ms. Veneta Chatmon, Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). Submit comments on the reduction of paperwork burden described in section VII of this notice to the Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20530 (Attention: OSHA Desk Officer).

XIII. Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this document.

Signed at Washington, DC, on October 15, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

List of Subjects

29 CFR Part 1910

Hazardous substances; Occupational safety and health; Reporting and recordkeeping requirements.

29 CFR Part 1915

Hazardous substances; Shipyard employment; Occupational safety and health; Reporting and recordkeeping requirements; Vessels.

29 CFR Part 1926

Construction industry; Hazardous substances; Occupational safety and health; Reporting and recordkeeping requirements.

In accordance with sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657)), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work and Safety Standards Act (40 U.S.C. 333), section 4 of the Administrative Procedures Act (5 U.S.C. 553) and Secretary of Labor's Order No. 3–2000 (65 FR 50017), the Agency proposes to amend 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart J—General Environmental Controls

1. The authority citation for subpart J is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

§ 1910.142 [Amended]

2. In § 1910.142, remove the words ''by telegram or telephone'' at the end of paragraph (l)(2).

Subpart K—Medical and First Aid

3. The authority citation for subpart K is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

4. In the first paragraph of Appendix A to § 1910.151, remove the words ''American National Standard (ANSI) Z308.1–1978, ''Minimum Requirements for Industrial Unit-Type First-aid Kits'' and add, in their place, ''American National Standard (ANSI) Z308.1–1998 ''Minimum Requirements for Workplace First-aid Kits.''

Subpart R—Special Industries

5. The authority citation for subpart R is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

§ 1910.268 [Amended]

6. In § 1910.268, revise paragraph (b)(3) to read as follows:

§ 1910.268 Telecommunications.

* * * * *

(b) * * *

(3) Employers must provide employees with readily accessible, and appropriate first aid supplies. A nonmandatory example of appropriate supplies is listed in appendix A to 29 CFR 1910.151.

* * * * *

Subpart Z—Toxic and Hazardous Substances

7. The authority citation for subpart Z is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), I–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653), except those substances that have exposure limits in Tables Z–1, Z–2, and Z–3, of 29 CFR1910.1000. Section 1910.1000 also issued under section (6)(a) of the Act (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911, except for the inorganic arsenic, benzene, and cotton dust listings.

Section 1910.1000 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 and 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

8. in § 1910.1001, revise paragraph (d)(7)(i) to read as set forth below and remove the word ''signed'' from the first sentence of the introductory text of paragraph (1)(7)(i).

§ 1910.1001 Asbestos.

* * * * *

(d) * * *

(7) Employee notification of monitoring results. (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

§ 1910.1003 [Amended]

9–10. Section 1910.1003 is amended by removing and reserving paragraph (f).

11. Section 1910.1017 is amended by:

a. Revising paragraphs (d)(2)(i), (d)(2)(ii), the last sentence of paragraph (f)(3) and paragraph (k)(2);

b. Removing and reserving paragraph (k)(6);

c. Redesignating paragraph (k)(7) as (k)(6); and

d. Removing paragraphs (n)(1) and (n)(2) and redesignating paragraph (n)(3) as new paragraph (n) and revising it.

The revisions read as follows:

§ 1910.1017 Vinyl chloride.

* * * * *

(d) * * *

(2) * * * (i) Must be repeated at least quarterly for any employee exposed, without regard to the use of respirators, in excess of the permissible exposure limit.

(ii) Must be repeated not less than every 6 months for any employee exposed without regard to the use of respirators, at or above the action level.

* * * * *

(f) * * *

(3) * * * Such plans must be updated at least annually.

* * * * *

(k) * * *

(2) Examinations must be provided in accordance with this paragraph at least annually.

* * * * *

(n) *Employee notification of monitoring results.* The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results and the steps being taken to reduce exposures within the permissible exposure limit either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

12. Section 1910.1018 is amended by:

a. Removing and reserving paragraph (d)

b. Revising paragraphs (e)(5)(i), (g)(2)(iv), (n)(2)(ii)(A), (n)(3)(i);

c. Removing paragraph (n)(3)(ii) and redesignating paragraph (n)(3)(iii) as new (n)(3)(ii); and

d. Removing in appendix C section I, second paragraph, item (2), the words ''and an International Labor Office UICC/Cincinnati (ILO U/C rating''.

The revisions read as follows:

§ 1910.1018 Inorganic arsenic.

* * * * *

(e) * * *

(5) * * * (i) The employer must, within 15 workin gdays after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

(g) * * *

(3) * * *

(iv) The plans required by this paragraph must be revised and updated at least annually to reflect the current status of the program.

* * * * *

(n) * * *

(3) * * *

(ii) * * *

(A) A standard posterior-Anterior chest x-ray;

* * * * *

(n) * * *

(e) * * * (i) Examinations must be provided in accordance with this paragraph at least annually.

* * * * *

§ 1910.1025 [Amended]

13. In § 1910.1025, revise paragraphs (d)(8)(i) and (e)(3)(iv) to read as follows:

§ 1910.1025 Lead.

* * * * *

(d) * * *

(8) * * *

(i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

(e) * * *

(3) * * *

(iv) Written programs must be revised and updated at least annually to reflect the current status of the program.

* * * * *

14. In § 1910.1027 remove the word ''signed'' from the first sentence of the introductory text of paragraph (l)(10)(i) and revise paragraph (d)(5)(i) to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(d) * * *

(5) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

§ 1910.1028 [Amended]

15–16. In § 1910.1028 revise paragraph (e)(7)(i) to read as follows:

§ 1910.1028 Benzene.

* * * * *

(e) * * *

(7) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

17. Section § 1910.1029 is amended by:

a. Revising paragraphs (e)(3)(i), (f)(6)(iv), (j)(2)(ii), (j)(3)(ii) and (j)(3)(iii);

b. Removing paragraph (j)(3)(iv);

c. Redesignating paragraph (j)(3)(v) as (j)(3)(iv); and

d. Removing the words ''and a ILO/UC rating to assure some standardization of x-ray reading'' from the third sentence of Appendix B.II. A.

The revisions read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(e) * * *

(3) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(f) * * *

(6) * * *

(iv) Written plans for such programs shall be submitted, upon request, to the Secretary and the Director, and shall be available at the worksite for examination and copying by the Secretary, the Director, and the authorized employee representative. The plans required under paragraph (f)(6) of this section shall be revised and updated at least annually to reflect the current status of the program.

* * * * *

(j) * * *

(2) * * *

(ii) A standard posterior-anterior chest x-ray;

* * * * *

(3) * * *

(ii) The employer must provide the examinations specified in paragraphs (j)(2)(i) through (j)(2)(vi) of this section at least annually and provide the examination specified in paragraph (j)(2)(vii) at least semi-annually for employees 45 years of age or older or with five (5) or more years employment in the regulated area.

(iii) Whenever an employee who is 45 years of age or older or with five (5) or more years employment in a regulated area transfers or is transferred from employment in a regulated area, the employer must continue to provide the examinations specified in paragraphs (j)(2)(i) through (j)(2)(vii) of this section at the frequencies specified in paragraph (j)(3)(ii) as long as that employee is employed by the same employer or a successor employer.

* * * * *

18–19. In § 1910.1043, revise paragraph (d)(4)(i) to read as follows:

§ 1910.1043 Cotton dust.

* * * * *

(d) * * *

(4) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

20. In § 1910.1044, remove and reserve paragraph (d) and revise paragraphs (f)(3)(i), (f)(3)(ii), (f)(5)(i) and the last sentence of paragraph (g)(2)(ii) to read as follows:

§ 1910.1044 1,2-Dibromo-3-chloropropane.

* * * * *

(f) * * *

(3) * * * (i) if the monitoring required by this section reveals employee exposures to be at or below the permissible exposure limit, the employer must repeat these measurements at least every 6 months.

(ii) If the monitoring required by this section reveals employee exposures to be in excess of the permissible exposure limit, the employer must repeat these measurements for each such employee at least quarterly. The employer must continue quarterly monitoring until at least two consecutive measurements, taken at least seven (7) days apart, are at or below the permissible exposure limit. Thereafter the employer must monitor at least every 6 months.

* * * * *

(5) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(g) * * *

(2) * * *

(ii) * * * These plans must be revised at least annually to reflect the current status of the program.

* * * * *

21.–22. In § 1910.1045, remove and reserve paragraph (d) and revise paragraphs (e)(3)(ii), (e)(3)(iii), (e)(5)(i) and (g)(2)(v) to read as follows:

§ 1910.1045 Acrylonitrile.

* * * * *

(e) * * *

(3) * * *

(ii) If the monitoring required by this section reveals employee exposure to be at or above the action level but at or below the permissible exposure limits, the employer must repeat such monitoring for each such employee at least every 6 months. The employer must continue these measurements every 6 months until at least two consecutive measurements taken at least seven (7) days a part, are below the action level, and thereafter the employer may discontinue monitoring for that employee.

(iii) If the monitoring required by this section reveals employee exposure to be in excess of the permissible exposure limits, the employer must repeat these determinations for each such employee at least quarterly. The employer must continue these quarterly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are at or below the permissible exposure limits, and thereafter the employer must monitor at least every 6 months.

* * * * *

(5) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(g) * * *

(2) * * *

(v) The plans required by this paragraph must be revised and updated at least annually to reflect the current status of the program.

* * * * *

23.–24. In § 1910.1047, revise (d)(7)(i) to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(d) * * *

(7) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

25. In § 1910.1048, revise (d)(6) to read as follows:

§ 1910.1048 Formaldehyde.

* * * * *

(d) * * *

(6) * * * The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees. If employee exposure is above the PEL, affected employees shall be provided with a description of the corrective actions being taken by the employer to decrease exposure.

26. In § 1910.1051, revise paragraph (d)(7)(i) to read as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

(d) * * *

(7) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

27. The authority citation for Part 1915 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (''the Act''), 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable.

Sections 1915.120 and 1915.152 also issued under 29 CFR part 1911.

Subpart Z—Toxic and Hazardous Substances

28. In § 1915.1001, revise paragraph (f)(5) to read as set forth below and remove paragraph (g)(6)(iii).

§ 1915.1001 Asbestos

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.* The employer must, as soon as possible but no later than 5 days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—Occupational Health and Environmental Controls

29.–30. The authority citation for subpart D is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (the ''Act''), 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

31. In § 1926.60, revise paragraph (f)(7)(i) to read as follows:

§ 1926.60 Methylenedianilene.

* * * * *

(f) * * *

(7) * * *(i) The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

32. In § 1926.62, revise paragraphs (d)(8)(i) and (e)(2)(v) to read as follows:

§ 1926.62 Lead.

* * * * *

(d) * * *

(8) * * *(i) The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(e) * * *

(2) * * *

(v) Written programs must be revised and updated at least annually to reflect the current status of the program.

Subpart Z—Toxic and Hazardous Substances

33. The authority citation for subpart Z is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (''the Act''), 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

Section 1926.1102 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

34. In § 1926.1101, revise paragraph (f)(5) to read as set forth below and remove paragraph (g)(6)(iii).

§ 1926.1101 Asbestos

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.* The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

35–36. In § 1926.1127 revise paragraph (d)(5)(i) to read as set forth below and remove the word ''signed'' from the first sentence of the introductory text of paragraph (1)(10)(i).

§ 1926.1127 Cadmium.

* * * * *

(d) * * *

(5) * * *(i) The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

[FR Doc. 02–27541 Filed 10–30–02; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Thursday,
October 31, 2002

Part IV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations to reflect changes made to the Higher Education Act of 1965, as amended (HEA), by the Campus Sex Crimes Prevention Act and to make a technical correction. The regulations clarify that institutions must include a new disclosure in their annual security reports that are due by October 1, 2003.

DATES: These regulations are effective October 31, 2002.

FOR FURTHER INFORMATION CONTACT: David Bergeron, U.S. Department of Education, 1990 K Street, NW. (8th Floor), Washington, DC 20006. Telephone: (202) 502–7815.

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SUPPLEMENTARY INFORMATION: The final regulations add a new paragraph, § 668.46(b)(12), to reflect a self-implementing change to section 485(f)(1) of the HEA that was made by the Campus Sex Crimes Prevention Act (section 1601 of Public Law 106–386). The Campus Sex Crimes Prevention Act adds a new disclosure to the list of disclosures an institution must provide in its annual security report to students and staff. In this new disclosure, an institution must inform members of the campus community of the means by which they can obtain information about registered sex offenders who may be present on campus. This change to the HEA is effective on October 28, 2002. The regulations clarify that institutions must include this new disclosure in their annual security reports that are due by October 1, 2003.

The final regulations correct an error in the definition of ''Referred for campus disciplinary action'', in § 668.46(a), to reflect the language of the HEA, by changing the word ''student'' to ''person''.

Waiver of Proposed Rulemaking and Negotiated Rulemaking

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 regulations merely reflect statutory changes to the HEA and needed technical corrections. The changes do not establish or affect substantive policy. The Secretary has concluded that these regulations are technical in nature and do not necessitate public comment. Therefore, under 5 U.S.C. 553(b)(B) the Secretary finds that such a solicitation would be unnecessary and contrary to the public interest. In addition, the Secretary also has decided to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3).

For the same reasons, the Secretary has determined, under section 492(b)(2) of the Higher Education Act of 1965, as amended, that these regulations should not be subject to negotiated rulemaking.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect certain institutions of higher education that participate in Title IV, HEA programs. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. A relatively small number of the 6,000 institutions of higher education participating in the Title IV, HEA programs meet the SBA definition of ''small entities.'' The technical corrections and changes will not have a significant economic impact on any of the institutions affected.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 25, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.46 is amended—

A. In paragraph (a), in the definition of ''Referred for campus disciplinary action'', by removing the word ''student'' and adding, in its place, ''person''.

B. By adding a new paragraph (b)(12).

The addition reads as follows:

§ 668.46 Institutional security policies and crime statistics.

* * * * *

(b) * * *

(12) Beginning with the annual security report distributed by October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law

enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

* * * * *

[FR Doc. 02–27599 Filed 10–30–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,
October 31, 2002

Part V

The President

Notice of October 29, 2002—Continuation of the National Emergency With Respect to Sudan

Federal Register
Vol. 67, No. 211
Thursday, October 31, 2002

Presidential Documents

Title 3—

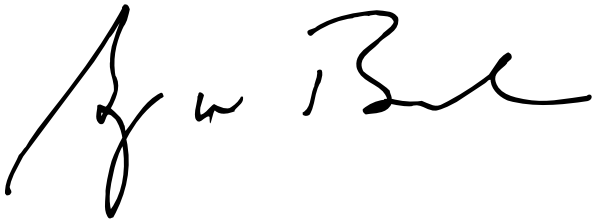
The President

Notice of October 29, 2002

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan, including continuing concern about the presence and activities of certain terrorist groups, including Hamas and Palestinian Islamic Jihad, and the prevalence of human rights violations, including slavery, restrictions on religious freedom, and restrictions on political freedom. Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
October 29, 2002.

[FR Doc. 02–27982
Filed 10–30–02; 11:11 am]
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LIST OF PUBLIC LAWS

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