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Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206–AJ77

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule, with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to revise the final regulations issued March 14, 2000, implementing the child care subsidy program legislation. We are issuing interim regulations because Congress made permanent the law authorizing agencies in the executive branch of the Federal Government to assist lower income employees with their child care costs, thus making child care more affordable for those employees. OPM also is issuing these revisions as part of a broader review of OPM's regulations to make the regulations more readable.

DATES: The regulations will become effective March 24, 2003, and comments must be received on or before May 23, 2003.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, 1900 E St., NW., Room 7315, Washington, DC 20415, Attn. Bonnie Storm. Comments may also be submitted by email to *bstorm@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Bonnie Storm by telephone at (202) 606–1313; by fax (202) 606–2091; or by email at *bstorm@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing interim regulations to revise the rules included in 5 CFR part 792. Congress enacted Public Law 106–58, section 643, on September 29, 1999, which allowed executive agencies to use appropriated funds to assist their lower income Federal employees with the costs of child care. The authority was first established as a pilot program effective from March 14, 2000, until September 30, 2001.

OPM issued regulations to implement the authority, and they were published in the **Federal Register** on March 14, 2000. The authority for the child care subsidy program was made permanent on November 12, 2001, by § 630, Public Law 107–67, the 2001 Treasury and General Government Appropriations Act. These interim regulations address the permanency of this legislation by deleting irrelevant dates, changing the Public Law number, and deleting references to the law as new (§ 792.201; § 792.202; § 792.204; § 792.209; § 792.214). Additionally, the law now authorizes advance payments to child care providers under certain circumstances as described in § 792.231. Revisions make the regulations easier to understand by substituting the words ''child care subsidy'' for ''tuition assistance'' to avoid any confusion associated with educational programs versus custodial care programs.

The regulations clarify that agencies must use child care providers that meet State and local licensing standards, and that employees are free to choose among both accredited and non-accredited providers in order to qualify. OPM wants to ensure that Federal employees have the widest possible choice in child care providers by making clear that all State and locally licensed or regulated child care providers, meaning those subject to the State and local standards of safety and care for children, qualify under the program.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The noticed is being waived because it is necessary for agencies to budget for and implement a child care subsidy program in FY2003.

The interim regulations are amended as follows:

Section 792.201—(interim § 792.200) Overseas locations: During the pilot program from March 14, 2000, to September 30, 2001, agencies asked OPM to address implementation of this legislation in overseas locations and the revisions clarify that the legislation applies to overseas locations.

Section 792.201 and Sec. 792.218—(interim § 792.200 and § 792.216) Eligible programs: The revisions include a change in policy that the legislation applies to daytime summer programs and continues to apply to full-time and part-time care, including before and after school programs.

Section 792.203—(interim § 792.202) Notification to Congress: The revisions clarify that notification to Congress is an annual obligation.

Section 792.205—(interim § 792.204) Data collection: The revisions state that OPM will collect data annually for a report the agencies can use.

Section 792.206—(no interim section) Benefits to the agency: This section has been removed from the regulations and is included in OPM's child care subsidy program guidance.

Section 792.207—(interim § 792.205) Use of funds: The revisions clarify that the agencies may use appropriated funds ordinarily used for salaries as well as funds for expenses.

Section 792.212—(interim § 792.210) Definition of civilian employee: The revisions clarify that private contractors are not eligible for the child care subsidy program.

Section 792.214—(interim § 792.212) Definition of contractor: The revisions make the definition more readable by removing redundancies.

Section 792.217—(interim § 792.215) Definition of a child with a disability: The revisions make the definition more readable.

Section 792.221—(no interim section) The process for helping lower income employees with child care subsidy: We removed this section from the regulations and included it in OPM's child care subsidy program guidance.

Section 792.223—(interim § 792.220) Are there any conditions which the child care provider must meet in order to participate in this program: Has been revised to rename the section for clarity purposes to ''What are the requirements that child care providers must meet in order to participate in this program?'' Revisions also clarify that overseas agencies do not have to be state licensed and/or regulated and that agencies must not restrict the use of funds to apply to accredited child care providers only.

Section 792.225—(interim § 792.222) Definition of lower income Federal

employee: The revisions make the definition more readable by deleting information that appears instead in the ''Guide for Implementing Child Care Legislation.''

Section 792.227—(interim § 792.224) Payments to employees: Agencies requested that OPM address the option of paying the child care subsidy directly to employees rather than the child care providers in special situations, and the revisions address that issue.

Section 792.230—(interim § 792.227) Duration: The revisions clarify that the child care subsidy program will be in effect as long as the agency has a program in addition to the conditions previously listed.

Section 792.232—(interim § 792.229) List of restrictions: The revisions include a sample list of restrictions agencies may place on the program that are in line with restrictions the agencies actually applied during the pilot phase. They also clarify that agencies must not restrict the use of funds to apply to accredited child care providers only.

Section 792.234—(interim § 792.231) Advance payments: The permanent legislation includes a provision for advance payments. The revisions address the conditions under which agencies may make advance payments.

Section 792.235—(no interim section) Disbursement and use of funds oversight responsibility: We removed this section from the regulations because the information is already stated in interim § 792.204.

These revisions make the regulations easier to understand by substituting the words ''agency'' and ''agencies'' for pronouns denoting ''agency'.

Section 792.203—Notifications: The revisions substitute ''agencies'' and ''agency'' for ''we.''

Section 792.228—Disbursements: The revisions substitute ''agency'' for ''we.''

Section 792.232—Restrictions: The revisions substitute ''agency'' for ''we.''

Section 792.233—Physical space: The revisions substitute ''agency'' for ''we.''

The interim changes will result in the following number order revisions:

Revised/Interim section no.	Former section no.
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792.201	792.202
792.202	792.203
792.203	792.204
792.204	792.205
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792.227	792.230
792.228	792.231
792.229	792.232
792.230	792.233
792.231	792.234

Executive Order 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these changes will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Lists of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 792 as follows:

PART 792—AGENCY USE OF APPROPRIATED FUNDS FOR CHILD CARE COSTS FOR LOWER INCOME EMPLOYEES

1. The authority citation for part 792 continues to read as follows:

Authority: Sec. 201 of Pub. L. 91–616; 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2(b)(13) of Pub. L. 98–24 (42 U.S.C. 290dd–1) and sec. 413 of Pub. L. 92–255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Services Act by sec. 2(b)(16)(A) of Pub. L. 98–24 (42 U.S.C. 290 ee–1); sec. 643, Pub. L. 106–58, 113 Stat. 477; sec. 630, Pub. L. 107–67.

2. Subpart B is revised to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What is the Child Care Subsidy Program Legislation and to Whom Does It Apply?

Sec.

792.200 What are the benefits of the child care subsidy program law?
792.201 What is the purpose of the child care subsidy program law?
792.202 Do agencies have any notification responsibilities before initiating a child care subsidy program and when may agencies obligate funds for the program?
792.203 What materials are available to assist agencies with the process of establishing a child care subsidy program?
792.204 Are there any special reporting and oversight requirements related to the child care subsidy program law?
792.205 Which agency funds may be used for the purpose of child care the subsidy program?
792.206 Are agencies required to participate in this program?
792.207 When does the child care subsidy program law become effective and how may agencies take advantage of this law?
792.208 What is the definition of *executive agency*?
792.209 What is the definition of child care subsidy *program*?
792.210 What is the definition of *civilian employee*?
792.211 *What is the definition of a Federally sponsored child care center*?
792.212 What is the definition of a *child care contractor?*
792.213 What is the definition of a *child* for this purpose of this subpart?
792.214 Which children are eligible for this subsidy?
792.215 What is the definition of a *child with disabilities*?
792.216 Are Federal employees with children who are enrolled in summer programs and part-time programs eligible for the child care subsidy program?
792.217 Are part-time Federal employees eligible for the child care subsidy program?
792.218 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?
792.219 Are agencies required to negotiate with their Federal labor organizations concerning the implementation of this law?
792.220 What are the requirements that child care providers must meet in order to participate in this program?
792.221 Is there a statutory cap on the amount or the percentage of child care costs that will be subsidized?
792.222 What is the definition of a *lower income Federal employee* and how is the amount of the child care subsidy determined?
792.223 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?
792.224 Are child care subsidies paid to the Federal employee using the child care?
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792.228 May these funds be used for children of Federal employees who are already enrolled in child care?
792.229 May an agency place restrictions or requirements on the use of these funds, and may the agency restrict the disbursement of such funds to only one type of care or to one location?
792.230 May an agency use appropriated funds to improve the physical space of the family child care homes or child care centers?
792.231 Is an agency permitted to make advance child care subsidy payments for an individual Federal employee?

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the Child Care Subsidy Program Legislation and to Whom Does It Apply?

§ 792.200 What are the benefits of the child care subsidy program law?

Sec. 630 of Public Law 107–67 permits executive agencies to use appropriated funds to improve the affordability of child care for lower income Federal employees. The law applies to child care in the United States and in overseas locations. Employees can benefit from reduced child care rates at Federal child care centers, non-Federal child care centers, and in family child care homes for both full-time and part-time programs such as before and after school programs and daytime summer programs.

§ 792.201 What is the purpose of the child care subsidy program law?

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

§ 792.202 Do agencies have any notification responsibilities before initiating a child care subsidy program and when may agencies obligate funds for the program?

An agency intending to initiate a child care subsidy program must provide notice to the House Subcommittee on Treasury, Postal Service and General Government Appropriations; to the Senate Subcommittee on Treasury and General Government Appropriations; and to its appropriations subcommittees prior to the obligation of funds. The agency must also notify OPM of its intention. The agency must give notice to these Congressional committees and OPM annually, and funds may be obligated immediately after the agency has made these notifications.

§ 792.203 What materials are available to assist agencies with the process of establishing a child care subsidy program?

OPM has developed guidance that contains samples of memoranda of understanding, marketing tools, child care subsidy program applications, and models for determining subsidy program eligibility. These materials are found in the ''Guide for Implementing Child Care Legislation—Public Law 107–67, Sec. 630.'' The Guide is available on OPM's Web site, *http://www.opm.gov/wrkfam.* Agencies may also obtain a copy by writing to OPM at U.S. Office of Personnel Management, Office of Work/Life Programs, 1900 E St., NW., Washington, DC 20415.

§ 792.204 Are there any special reporting and oversight requirements related to the child care subsidy program law?

Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM. OPM will provide agencies the mandatory reporting form for this purpose. OPM also will produce an annual report for use by the agencies.

§ 792.205 Which agency funds may be used for the purpose of the child care subsidy program?

Agencies are permitted to use appropriated funds, including revolving funds, that are otherwise available to them for salaries and expenses.

§ 792.206 Are agencies required to participate in this program?

Agencies are not required to participate in this program. The decision to participate is left to the discretion of the agency. If an agency chooses to participate, it may not use funds other than those specified in § 792.205.

§ 792.207 When does the child care subsidy program law become effective and how may agencies take advantage of this law?

This authority was made permanent on November 12, 2001. Agencies may now offer child care subsidy programs to their lower income Federal employees to help them reduce their child care costs.

§ 792.208 What is the definition of executive agency?

The term *executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

§ 792.209 What is the definition of child care subsidy program?

The term child care subsidy *program,* for the purposes of this subpart, means the program that results from the expenditure of agency funds to assist lower income Federal employees with child care costs, including such activities as: Determining which employees receive a subsidy and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee use of the program.

§ 792.210 What is the definition of civilian employee?

The term *civilian employee,* for the purposes of this subpart, means all appointive positions in an executive agency (5 U.S.C. 105). It does not refer to private contractors hired by the agencies.

§ 792.211 What is the definition of a Federally sponsored child care center?

The term *Federally sponsored child care center,* for the purposes of this subpart, is a child care center that is located in a building or space that is owned or leased by the Federal Government.

§ 792.212 What is the definition of a child care contractor?

Section 630 of Public Law 107–67 provides that child care services provided by contract are encompassed by this new legislation. The term *child care contractor* applies to an organization or individual providing child care services for which Federal families are eligible. These entities are commonly referred to as ''child care providers'' in the child care industry and they provide services under contract in center-based child care and family child care homes.

§ 792.213 What is the definition of a child for the purposes of this subpart?

For the purposes of this subpart, a *child* is considered to be:

(a) A biological child who lives with the Federal employee;

(b) An adopted child;

(c) A stepchild;

(d) A foster child;

(e) A child for whom a judicial determination of support has been obtained; or

(f) A child to whose support the Federal employee, who is a parent or legal guardian, makes regular and substantial contributions.

§ 792.214 Which children are eligible for this subsidy?

The law covers the children of Federal employees, excluding contract employees, from birth through age 13 and disabled children through age 18.

§ 792.215 What is the definition of a child with disabilities?

For the purpose of this subpart, a *child with disabilities* is defined as one who is unable to care for himself or herself based on a physical or mental incapacity as determined by a physician or licensed or certified psychologist.

§ 792.216 Are Federal employees with children who are enrolled in summer programs and part-time programs eligible for the child care subsidy program?

Federal employees with children (birth through age 13) and children with disabilities (children through age 18) who are enrolled in daytime summer programs and part-time programs such as before and after school programs are eligible for the child care subsidy program. The summer and part-time programs must be licensed and/or regulated.

§ 792.217 Are part-time Federal employees eligible for the child care subsidy program?

Federal employees who work part-time are eligible for the child care subsidy program.

§ 792.218 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?

The bill includes non-Federal center-based child care as well as care in family child care homes, as long as the providers are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.219 Are agencies required to negotiate with their Federal labor organizations concerning the implementation of this law?

Agencies are reminded of their obligation under 5 U.S.C. 7117 to negotiate or consult, as appropriate, with the exclusive representatives of their employees on the implementation of the regulations in this subpart.

§ 792.220 What are the requirements that child care providers must meet in order to participate in this program?

The provider, whether center-based or family child care, must be licensed and/or regulated by the State and, where applicable, by local authorities where the child care service is delivered. Outside of the United States, agencies may adopt or create criteria to ensure a child care center or family child care home is safe. Agencies must not restrict the use of funds to apply to accredited child care providers only.

§ 792.221 Is there a statutory cap on the amount or the percentage of child care costs that will be subsidized?

The law does not specify a cap on the amount or percentage of child care subsidy that may be subsidized.

§ 792.222 What is the definition of a lower income Federal employee and how is the amount of the child care subsidy determined?

Each agency decides who qualifies as a *lower income Federal employee* within that agency. OPM has provided guidance for determining eligibility in the ''Guide for Implementing Child Care Legislation—Public Law 107–67, Sec. 630.'' This publication is available on OPM's Web site, *http://www.opm.gov/wrkfam.*

§ 792.223 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or subsidy program criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the subsidy program eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.224 Are child care subsidies paid to the Federal employee using the child care?

Agencies must pay the child care provider directly, unless one of the following exceptions applies:

(a) If an agency chooses to have an organization administer its program (see § 792.223), the organization pays the child care provider;

(b) For overseas locations, the agency may choose to pay the employee if the provider deals only in foreign currency; or

(c) In unique circumstances, an agency may obtain written permission from OPM to do so.

§ 792.225 May an agency disburse funds to an organization that administers the child care subsidy program prior to the time the employee receives the child care services?

The agency may disburse funds to an organization that administers the child care subsidy program in one lump sum. The organization will be responsible for tracking the funds and providing the agency with regular reports. An agency contract should specify that any unexpended funds shall be returned to the agency after the contract is completed.

§ 792.226 How may an agency disburse funds to a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies may be pooled together for the benefit of the employees qualified for the child care subsidy program.

§ 792.227 How long will the child care subsidy program be in effect for a Federal employee?

The child care subsidy program, in the form of a reduced child care cost rate, shall be in effect from the time the agency makes a decision for a particular Federal employee and the child is enrolled in the program until one of the following occurs:

(a) The child is no longer enrolled in the program;

(b) The employee no longer qualifies as a ''lower income employee'; or

(c) The agency no longer has a child care subsidy program.

§ 792.228 May these funds be used for children of Federal employees who are already enrolled in child care?

The funds may be used for children currently enrolled in child care as long as their families meet the child care subsidy program eligibility requirements established by the agency.

§ 792.229 May an agency place restrictions or requirements on the use of these funds, and may the agency restrict the disbursement of such funds to only one type of child care or to one location?

(a) Depending on the agency's staffing needs and the employees' own needs, including the local availability of child care, the agency may choose to place restrictions on the use of its funds for the child care subsidy program. For example, an agency may decide to restrict use to the following:

(1) Federal employees who are full-time permanent employees;

(2) Federal employees using an agency on-site child care center;

(3) Federal employees using full-time child care; or

(4) Federal employees using child care in specific locations.

(a) With the exception of § 792.229(c) an agency may determine whether and what restrictions to impose on the use of appropriated funds for the child care subsidy program.

(b) Agencies must not restrict the use of funds to apply to accredited child care providers only.

§ 792.230 May an agency use appropriated funds to improve the physical space of the family child care homes or child care centers?

An agency may not use appropriated funds under this program to improve the physical space of child care centers and family child care homes.

§ 792.231 Is an agency permitted to make advance child care subsidy program payments for an individual Federal employee?

An agency may choose to make advance payments to a child care provider in certain situations. Advance payments may be paid to the child care provider when the provider requires payment up to one month in advance of rendering services. Except in accordance with § 792.225, an agency may not make advance payments for more than one month before the employee receives child care services.

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rulemaking amends the technical service provider assistance rule, 7 CFR part 652, published in the **Federal Register** on November 21, 2002, by setting forth the United States Department of Agriculture (Department) process for establishing payment rates for program participant acquisition of technical services. In addition, this rulemaking sets forth the Department's policy regarding subcontracting by technical service providers in the course of their delivery of technical services and amends 7 CFR part 652 accordingly. Finally the Department is using the opportunity presented by this rulemaking to clarify its policy regarding the certification process, to amend the definition of technical service provider in 7 CFR 652.21, and to amend the dates for submitting an Application for Certification in 7 CFR 652.21(f) and (d). The Natural Resources Conservation Service (NRCS) seeks comments from the public on this interim final rule.

DATES: Effective date: March 24, 2003. Comments on this rule must be received by June 23, 2003.

ADDRESSES: Send comments by mail to Melissa Hammond, Technical Service Provider Coordinator, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, or by e-mail to: *melissa.hammond@usda.gov*, Attention: Technical Service Provider Assistance. This interim final rule may also be accessed via the Internet through the NRCS Home Page at *http://www.nrcs.usda.gov,* by selecting Farm Bill 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–6731; fax: (202) 720–3052; submit e-mail to: *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION:

Discussion

Payment Rates

As indicated in the preamble section of the technical service provider interim final rule, 7 CFR part 652, the Department is publishing this interim final rule, which amends the technical service provider rule, in order to set forth the Department's method of setting payment rates for technical service provider reimbursement. Accordingly, this rulemaking adds a new paragraph (j) to section 652.5 of the existing technical service provider rule, and adds a new paragraph (h) to section 652.4, which addresses the use of subcontractors. This rulemaking also clarifies the Department's policy regarding the certification process set forth in the interim final rule at 7 CFR part 652.21.

The Department will determine payment rates by setting not-to-exceed rates for technical services. The Department may use some of the methods set forth in the preamble of the interim final rule, 7 CFR part 652, when calculating these rates, including conducting a national survey of technical service providers and vendors who provide technical services to determine their price data for actual services performed and using NRCS's own cost of providing technical services. In addition, when determining not-to-exceed rates, NRCS may use other sources of data that it determines are reliable, including its own cost of procuring technical services. The Department chose this method to set the technical service not-to-exceed rates because it provides direct input from the marketplace.

For at least the first year of implementation of the technical service provider process, one of the methods NRCS will use to obtain cost data is directly from technical service providers through the existing Internet-based posting system called FedBizOpps. Through a notice on the NRCS Web site, and using existing agency mailing lists, the Department will be requesting providers to respond to a solicitation posted at the FedBizOpps Web site, *http://www.fedbizopps.gov/,* for cost data related to specific categories of technical services and specific geographic areas. The Department anticipates that it will post this solicitation by March 1, 2003. Any price data collected from technical service providers and vendors with the national survey is for informational purposes only to assist the Department in establishing payment rates for technical services. Submission of price data by the provider does not obligate the Department, nor does it guarantee the provider the award of a specific contract by any program participant or the Department for carrying out technical services.

NRCS will analyze the pricing information submitted through FedBizOpps, and that obtained from other sources, using a standardized methodology. Not-to-exceed payment rates will be established nationally on a State by State basis for categories of technical services. To ensure consistency across State lines, NRCS will coordinate payment rates between adjacent States where similar resource conditions and agricultural operations exist, taking into account differences in State laws, the cost of doing business, competition, and other variables. NRCS may subsequently adjust the rates, as needed on a case by case basis, during program implementation in response to unusual conditions or unforeseen circumstances, such as services provided for highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific not-to-exceed payment rate. The Department will review the Technical Service Provider system, including the certification, payment, and technical service quality evaluation processes, by March 1, 2004.

In order to encourage participants to consider price in their selection of technical service providers, NRCS may provide program participants, who select technical service providers with prices below the not-to-exceed rate,

with a credit of 50 percent of the technical service savings to apply toward their cost of practice installation. Specifically, the program participant would receive 50 percent of the cost savings of the difference between the not-to-exceed rate and the actual billing for the technical services provided. For example, if the not-to-exceed rate for technical services for a conservation practice is $10,000, and the participant chooses a provider whose service costs $9,000, the participant has earned a $500 credit toward the cost of practice installation. Assuming the participant's application has been selected for funding, the practice to be installed cost $20,000, and the cost share requirement is 50 percent, then the participant's cost share of the practice would be $9,500. Using this incentive system, both the participant and the Federal government enjoy a net savings, and the end result is a more efficient and cost-effective process.

Under no circumstances may the earning of credits by a participant result in the Department exceeding any statutory limitation on cost-sharing or payments for a particular program. Additionally, the earning of credits has no bearing on whether an application for financial assistance (installation of conservation practices) is selected. Consequently, the credit system will not result in a violation of any statutory prohibition against ''bidding down,'' (*i.e.*, using cost as the deciding factor when choosing among applications that are expected to yield comparable environmental benefits).

NRCS believes that this dynamic approach to setting not-to-exceed payment rates and providing incentives to program participants to choose competitively priced services will help ensure that its payment rates do not lag behind the development of technological efficiencies that decrease the time and cost associated with the delivery of technical services.

NRCS is interested in receiving comments on any aspect of payment rates included in this rulemaking amendment or any other items regarding payment rates.

Use of Subcontractors By Technical Service Providers

Technical service providers may not always have the expertise needed to carry out all aspects of delivering technical services for conservation practices or for conservation planning. Therefore, in order to make efficient use of the marketplace, technical service providers contracted to carry out technical services may use the services of subcontractors who are certified by NRCS for the specific technical services or expertise needed. The contracted technical service provider remains responsible for the overall technical services provided. In addition, subcontracted technical service providers are responsible for providing services in accordance with the terms of their Certification Agreement. Technical service providers will not be reimbursed if they subcontract with entities that are not certified providers for the particular technical services which they are providing.

National Certification

The Department is using the opportunity presented by this rulemaking to clarify its policy regarding the certification process set forth in the interim final rule at 7 CFR part 652. The technical service provider certification process is a national certification process with uniform criteria and requirements; *see* 7 CFR part 652.21. Applicants can apply for certification to the Chief, NRCS, through the agency's TechReg Web site using one application, and listing each State for which the applicant wishes to be considered for certification. Applicants must meet the certification criteria for each category of technical services in which they desire certification.

Applicants are required to self-certify that they meet all applicable State licensing or similar requirements for those technical services where certification is sought for each State. Applicants for certification must demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto, for planning and applying specific conservation practices and management systems for which certification is sought. In addition to National and State NRCS guidelines and criteria, applicants must also be familiar with any unique criteria required at the county level for particular practices before providing services in a particular county. By signing a Certification Agreement, applicants are acknowledging that they are aware of these local criteria, and agree to familiarize themselves with any such criteria by contacting the appropriate NRCS State official before providing technical services. In order to be considered for certification, the applicant must submit a completed Certification Application to NRCS electronically through the TechReg Web site. The Department encourages applicants and certified technical service providers to participate in NRCS sponsored trainings at the State and local level in order to gain familiarity with NRCS local criteria and guidelines, as well as to stay current on new developments in agency policy related to the provision of technical services.

NRCS is amending the definition of technical service provider to reflect national certification. NRCS is also revising the dates from March 1, 2003, to June 1, 2003, for submitting an application regarding conditional certifications in section 652.21(f) and (g).

Request for Comments

NRCS is extending the comment period for the Technical Service Provider Assistance Interim Final Rule published on November 21, 2002, Vol. 67, No. 225, for 30 days. Comments must be received by the date indicated at the beginning of this amendment. Comments on this amendment must be received within 90 days after publication in the **Federal Register** in accordance with the date indicated at the beginning of this amendment.

NRCS is interested in receiving additional feedback from the public on the following issues.

Whether governing board members of a public agency should or should not be engaged as private consultant technical service providers or as technical service providers under the auspices of that public agency.

Whether or not there should be a maximum number of uncertified employees serving under the direction of a certified individual within a private-sector entity, or a public agency where that certified individual warrants the work of those uncertified employees and what that maximum number should be.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this interim final rule is a significant regulatory action, and has been reviewed by the Office of Management and Budget (OMB). Pursuant to section 6(a)(3) of Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with the interim final rule for Technical Service Provider Assistance published in the **Federal Register** on November 21, 2002, and included the analysis as part of a Regulatory Impact Analysis document prepared for that interim final rule. The provisions of this interim final rule do not alter the analysis that was originally

prepared. A copy of the analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail to *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance—Economic Analysis; or at the following Web address: *http://www.nrcs.usda.gov.*

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. The U.S. Department of Agriculture (USDA) has not identified any State or local laws that are in conflict with this regulation, or that would impede full implementation of this rule. In the event that such conflict is identified, the provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Secretary of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

National Environmental Policy Act

The regulations promulgated by this rule do not authorize any action that may negatively affect the human environment. Accordingly, an analysis of impacts under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, has not been performed. This interim final rule will help implement new and existing USDA conservation programs, which are subject to the environmental analyses pursuant to the National Environmental Policy Act.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the promulgation of regulations and the administration of title II of said Act, which authorizes the use of certified technical service providers, be carried out without regard to chapter 35 of title 44 of the United States Code (commonly known as the Paperwork Reduction Act). Accordingly, these regulations, related forms, and other information collection activities needed to establish payment rates under these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible, and to NRCS in particular. The forms and other information collection activities required for participation in technical services delivery under the technical service provider assistance rule, amended by this rule, are not fully implemented for the public to conduct business with NRCS electronically. However, the required standard forms discussed in this rule will be available electronically through the USDA eForms Web site, at*www.sc.egov.usda.gov,* for downloading. The regulation will be available at the NRCS home page at *www.nrcs.usda.gov.*

Unfunded Mandates Reform Act of 1995

Pursuant to title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 104–354, USDA classified this interim final rule as not major.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis was completed for the interim final rule for Technical Service Provider Assistance published in the **Federal Register** on November 21, 2002. The provisions of this interim final rule do not alter analysis that was originally prepared. The review revealed no factors indicating any disproportionate adverse civil rights impacts for participants in NRCS programs and services who are minorities, women, or persons with disabilities. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail to *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance—Civil Rights Impact Analysis; or at the following Web address: *http://www.nrcs.usda.gov.*

List of Subjects in 7 CFR Part 652

Natural Resources Conservation Service, Soil conservation, Technical assistance, Water resources.

For the reasons stated in the preamble, the Natural Resources Conservation Service hereby amends title 7 of the Code of Federal Regulations as set forth below:

Accordingly, title 7 of the Code of Federal Regulations part 652 is amended by adding a new paragraph.

PART 652—TECHNICAL SERVICE PROVIDERCC ASSISTANCE

1. The authority citation for part 652 continues to read as follows:

Authority: 16 U.S.C. 3842.

2. Section 652.5 is amended by revising paragraph (d) and adding a new paragraph (j) to read as follows:

§ 652.5 Program participant acquisition of technical services.

* * * * *

(d) To obtain payment for technical services, the program participant must submit to the Department an invoice, supporting documentation, and a request for payment. The Department may pay a program participant for technical services provided by a technical service provider hired by the program participant through a reimbursement payment made directly to the program participant; or upon receipt of an assignment of payment from the program participant, a payment made directly to the technical service provider.

* * * * *

(j) Payment rates.

(1) NRCS will establish payment rates by calculating not-to-exceed rates for technical services. NRCS will calculate not-to-exceed rates using price data that it may acquire through various sources that it deems reliable.

(2) Establishing not-to-exceed payment rates.

(i) NRCS will analyze the pricing information using a standardized methodology.

(ii) Not-to-exceed payment rates will be established nationally on a State by State basis for categories of technical services.

(iii) NRCS will coordinate payment rates between adjacent States to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some

degree between States due to differences in State laws, the cost of doing business, competition, and other variables.

(iv) NRCS will review payment rates annually, or more frequently as needed, and adjust the rates based upon data from existing contracts, Federal cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis, in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific not-to-exceed payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

(3) Cost share credits. In order to encourage competitive pricing, a program participant may earn credits toward their cost-share for practice installation under a program contract when a participant selects a technical service provider with prices below the not-to-exceed rates for the provision of technical services. The credits earned will be equal to a percentage of the savings generated by the participant by choosing a lower cost technical service provider. However, in no cases may the application of cost share credits to a program contract result in the Department exceeding any statutory limitations on cost sharing or payments for a particular program.

3. Section 652.1 is amended by revising the definition of *technical service provider* to read as follows:

§ 652.1 Definitions.

* * * * *

Technical service provider means an individual, entity, or public agency certified by NRCS and placed on the approved list to provide technical services to program participants or to the Department.

4. Section 652.4 is amended by adding a new paragraph (h) to read as follows:

§ 652.4 Technical service standards.

* * * * *

(h) Technical service providers may utilize the services of subcontractors to provide specific technical services or expertise needed by the technical service provider, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their certification agreement. Payments will not be made for any technical services provided by uncertified subcontractors.

5. In § 652.21 paragraphs (f) and (g) are revised to read as follows:

* * * * *

(f) An individual, private-sector entity, or public agency is conditionally certified provided they had entered into a contract, cooperative agreement, or contribution agreement with the Department prior to March 24, 2003 to provide technical services and they submit an Application for Certification by June 1, 2003. An individual, private-sector entity, or public agency with conditional certification status under this paragraph may continue to provide technical services in accordance with the terms and conditions of the above-described contract, cooperative agreement, or contribution agreement. Conditional certification shall expire either by the date NRCS and the individual, private-sector entity, or public agency enter into a Certification Agreement, as described in § 652.22(c)(1) or September 30, 2003, whichever is earlier.

(g) An individual is conditionally certified if the individual was certified under NRCS policy in effect prior to March 24, 2003, and submits an Application for Certification by June 1, 2003. An individual with conditional certification status under this paragraph may continue to provide technical services to the Department and to program participants in accordance with the above-described prior certification. Conditional certification shall expire either by the date NRCS and the individual enter into a Certification Agreement, as described in § 652.22(c)(1) or September 30, 2003, whichever is earlier.

Signed in Washington, DC on March 7, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–6668 Filed 3–21–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 03N–0024]

New Animal Drugs; Phenylbutazone; Extralabel Animal Drug Use; Order of Prohibition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 28, 2003 (68 FR 9528). The document issued an order prohibiting the extralabel use of phenylbutazone animal and human drugs in female dairy cattle 20 months of age or older. FDA is correcting the regulation listing the prohibition by replacing ''Phenylbutazone'' with ''Phenylbutazone in female dairy cattle 20 months of age or older.'' This correction is being made so that the phenylbutazone listing accurately reflects the agency's intent, which is reflected in the preamble to the final rule.

DATES: This rule is effective May 29, 2003.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1168, e-mail: gdunnava@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–4741, appearing on page 9528 in the **Federal Register** of Friday, February 28, 2003, the following correction is made:

§ 530.41 [Corrected]

On page 9530, in the first column, in § 530.41 *Drugs prohibited for extralabel use in animals*, in paragraph (a)(12), ''Phenylbutazone.'' is corrected to read ''Phenylbutazone in female dairy cattle 20 months of age or older.''

Dated: March 13, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–6891 Filed 3–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 00N–0018]

Medical Devices; Reclassification of the Knee Joint Patellofemorotibial Metal/Polymer Porous-Coated Uncemented Prosthesis and the Knee Joint Femorotibial (Uni-compartmental) Metal/Polymer Porous-Coated Uncemented Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has reclassified two fixed-bearing knee joint prostheses, the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace a knee joint, and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace part of a knee joint. FDA has reclassified the devices from class III (premarket approval) into class II (special controls). The special control that will apply is a guidance document entitled ''Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses; Guidance for Industry and FDA.'' The agency is reclassifying these devices into class II because special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls. The agency is also announcing that it has issued an order in the form of a letter to the Orthopedic Surgical Manufacturers Association (OSMA) reclassifying the devices.

EFFECTIVE DATE: This rule is effective March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Peter G. Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f)) of the act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)); or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification (510(k)) procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the act (21 U.S.C.360c(f)(3)). This section states that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or that a manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(3)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Recommendations of the Panel

On July 25, 1997, FDA filed a reclassification petition submitted by OSMA, requesting reclassification of the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace a knee joint, and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace part of a knee joint, from class III into class II. FDA consulted with the Orthopedic and Rehabilitation Devices Panel (the Panel) regarding the reclassification petition. During a public meeting on January 12 and 13, 1998, the Panel recommended that FDA reclassify these two devices from class III into class II. The Panel recommended that the special controls for these devices be FDA guidance documents, consensus standards, and postmarket surveillance.

FDA considered the Panel's recommendation and tentatively agreed that these generic types of devices should be reclassified from class III to class II. FDA agreed with the Panel that guidance documents, which include the consensus standards, are appropriate special controls for the devices.

FDA disagreed with the Panel that postmarket surveillance, under section 522 of the act (21 U.S.C. 3601), is an appropriate special control for these devices. In their deliberations, the Panel stated that it was important that adverse device outcomes be reported to FDA and be followed through postmarket surveillance. However, FDA believes that another postmarket mechanism better addresses the Panel's concern. FDA believes that the existing mandatory Medical Device Reporting system is the appropriate mechanism to report and follow such adverse events. Therefore, FDA determined that postmarket surveillance under section 522 of the act is unnecessary to address the Panel's concerns and to reasonably

assure the safety and effectiveness of the devices.

Subsequently, in the **Federal Register** of March 7, 2000 (65 FR 12015), FDA issued the Panel's recommendation for public comment. FDA received three comments on the notice of panel's recommendation that supported the Panel's recommendation to reclassify the devices into class II. FDA agrees with these comments.

One comment also requested the following three changes in the device identification:

(1) Change the proposed porous coating thickness range from 600 to 1,500 microns to 500 to 1,600 microns ''to increase the potential for bone ingrowth.''

(2) Change the proposed volume porosity percentage range from 30 to 70 percent to 30 to 80 percent based upon a transcortical animal study model that demonstrated more bone formation occurred with the use of higher volume porosity materials than with the use of lower volume porosity materials

(3) Include in the device identifications a statement that a new coating material that meets the identification parameters (volume porosity, average pore size, interconnecting porosity, and porous coating thickness) and has equivalent performance (demonstrated by mechanical testing and/or animal studies) can be determined to be substantially equivalent to a legally currently marketed device without human clinical information.

FDA agrees that the lower limit of the porous-coating thickness should be 500 microns not 600 microns. The lower limit of the Panel's recommendation was 500 microns, but due to a typographical error a lower limit of 600 microns was printed in the notice of panel recommendation. FDA is noting and correcting this error. FDA disagrees with the request to raise the upper limit of the porous coating thickness range to 1,600 microns because the comment did not provide any data to support this requested change. FDA notes that a higher porous coating thickness is not necessarily excluded and that a sponsor of a new device may submit material characterization information to demonstrate that a device with a thicker porous coating material is substantially equivalent to a legally marketed predicate device.

FDA disagrees with the comment that suggested a change in the volume porosity percentage range in the identifications because the agency does not believe that a single animal study is sufficient to demonstrate in vivo performance of joint replacement devices in humans. FDA also notes that a material with a higher porosity is not necessarily excluded and that a sponsor of a new device may submit material characterization information to demonstrate that a more porous material is substantially equivalent to a legally marketed predicate device.

FDA disagrees with the comment that suggested that the identifications should allow for a change to a new material that is comparable, because this addition to the identifications is unnecessary. The device identifications do not exclude the use of new materials in devices whose safety and effectiveness performance can be demonstrated to be substantially equivalent to legally marketed devices.

Based on consideration of this comment and reevaluation of previously cleared orthopedic joint prostheses, FDA has revised the device identifications published in the notice of panel recommendation. FDA has determined that the words metal and polymer adequately define the material composition of the devices and that it is unnecessary to list in the device identifications all the types of metals and polymers in legally marketed devices of these types. FDA has also removed the porous coating characteristics from the device identifications in the notice of panel recommendation because it is also unnecessary to list porous coating characteristics ranges in the device identifications. FDA has concluded that it is more appropriate to describe materials and porous coating characteristics in the class II special controls guidance document. FDA notes that guidance documents can be updated after applicants demonstrate that devices with new materials are substantially equivalent legally marketed devices.

III. FDA's Conclusion

After reviewing the data in the petition and presented at the Panel meeting, and after considering the Panel's recommendation and the comments on the notice of panel recommendation, FDA has determined that the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace a knee joint, and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace part of a knee joint, can be reclassified from class III into class II.

On February 3, 2003, FDA issued an order to the petitioner reclassifying the devices into class II (special controls). The order also identified the special control applicable to these devices as a guidance document entitled ''Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses; Guidance for Industry and FDA.'' The class II special controls guidance document incorporates the 4 FDA guidance documents and the 11 American Society for Testing Materials (ASTM) consensus standards that were identified as proposed special controls for the devices in the notice of panel recommendation. FDA notes that the class II special controls guidance document includes the updated ASTM consensus standards. FDA has also incorporated into the class II special controls guidance document one additional FDA guidance document, 16 additional ASTM consensus standards, and 11 International Organization for Standardization (ISO) consensus standards. This class II special controls guidance document is now the special control for these devices.

An alternative approach to the special controls guidance document may be used if such approach satisfies the applicable statute and regulations. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for one of these devices will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Accordingly, as required by 21 CFR 860.134(b)(6) and (b)(7) of the regulations, FDA is announcing the reclassification of the generic knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace a knee joint, and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis, which is intended to be implanted to replace part of a knee joint, from class III into class II. In addition, FDA is issuing this final rule to codify the reclassification of the device by adding new §§ 888.3565 and 888.3535.

IV. Electronic Access

In order to receive the guidance document entitled ''Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses; Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-

On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order the document. Enter the document number 1418 followed by the pound sign (#). Follow the remaining prompts to complete your request.

Persons interested in obtaining a copy of the FDA guidance document may do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. You may access the CDRH home page at http://www.fda.gov/cdrh. You may search for all CDRH guidance documents at http://www.gfa.gov/cdrh/guidance.html. Guidance documents are also available at http://www/fda.gov/ohrms/dockets.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve all manufacturers of the devices of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $110 million or more on either the private sector or state, local, and tribal governments in the aggregate, and, therefore, a summary statement or analysis pursuant to section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

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

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Public Law. 104–13) is not required.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 888.1 is amended by adding paragraph (e) to read as follows:

§ 888.1 Scope

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at http://www.fda.gov/cdrh/guidance.html.

3. Section 888.3535 is added to subpart D to read as follows:

§ 888.3535 Knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis.

(a) *Identification.* A knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surface. It has no linkage across-the-joint. This generic type of device is designed to achieve biological fixation to bone without the use of bone cement. This identification includes fixed-bearing knee prostheses where the ultra-high molecular weight polyethylene tibial bearing is rigidly secured to the metal tibial baseplate.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance: ''Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses; Guidance for Industry and FDA.'' See § 888.1 for the availability of this guidance.

4. Section 888.3565 is added to subpart D to read as follows:

§ 888.3565 Knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis.

(a) *Identification.* A knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis is a device intended to be implanted to replace a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device is designed to achieve biological fixation to bone without the use of bone cement. This identification includes fixed-bearing knee prostheses where the ultra high molecular weight polyethylene tibial bearing is rigidly secured to the metal tibial base plate.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance: ''Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses; Guidance for

Industry and FDA.'' See § 888.1 for the availability of this guidance.

Dated: March 10, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health

[FR Doc. 03–6857 Filed 3–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2002–13069]

RIN 2125–AE78

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA revises its regulation on traffic control devices on Federal-aid and other highways, which prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways. This final rule makes some nomenclature changes and removes a reference to an outdated regulation.

EFFECTIVE DATE: April 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, (202) 366–9064; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet user may access comments received by the U.S. DOT Docket Facility, Room PL–401, by using the universal resource locator (URL) *http://dmses.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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

Background

On October 30, 2002, at 67 FR 66076, the FHWA published a notice of proposed rulemaking (NPRM) proposing revisions to the regulation that prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways. These proposals were to provide nomenclature changes and to remove the outdated reference to an outdated regulation. The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. Due to the reorganization of the FHWA and the deletion of 23 CFR 1204.4 by the National Highway Traffic Safety Administration (NHTSA), it is necessary to update 23 CFR 655.603.

The FHWA issued this notice to provide an opportunity for public comment on the proposed changes to 23 CFR 655.603. Based on the comment received and its own experience, The FHWA is issuing a final rule.

Summary of Comments

The FHWA received one comment to the docket in response to the NPRM. The comment referred to a concern to improve the visual impact of certain sign designs within the MUTCD, specifically signs related to park and ride, carpooling and commuter buses. Since the comment is outside the scope of the NPRM, the FHWA decided to revise the proposals contained within the NPRM without change. The comment will be forwarded to the FHWA Office of Transportation Operations for further review and action, if necessary.

Rulemaking Analysis and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. The actions in this final notice are intended to clarify 23 CFR 655.603 in light of the FHWA reorganization and to remove the reference to an outdated regulation. The FHWA expects that this action will provide clarity at little or no additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This final rule only updates the authorities of the FHWA and referenced documents regarding MUTCD compliance on existing highways. Such updates will provide transportation entities with the appropriate points of contact regarding the MUTCD. The FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This action does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year to comply with these changes as this action is minor and non-substantive in nature, requiring no additional or new expenditures.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of federalism assessment. The final rule is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not

impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: March 6, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—[Amended]

2. Amend § 655.603 by revising paragraphs (b)(1), (b)(2) and (d)(1) to read as follows:

§ 655.603 Standards.

* * * * *

(b) *State of Federal MUTCD.*

(1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Division Administrators shall approve the State MUTCDs and supplements that are in substantial conformance with the national MUTCD.

(2) The FHWA Associate Administrator of the Federal Lands Highway Program shall approve other Federal land management agencies' MUTCDs that are in substantial conformance with the national MUTCD. States and other Federal agencies are encouraged to adopt the national MUTCD as their official Manual on Uniform Traffic Control Devices.

* * * * *

(d) Compliance—(1) *Existing highways.* Each State, in cooperation with its political subdivisions, and Federal agency shall have a program as required by 23 U.S.C. 402(a), which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

[FR Doc. 03–6920 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 16

[AAG/A Order No. 009–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Drug Enforcement Administration.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records entitled ''Clandestine Laboratory Seizure System (CLSS), Justice/DEA–002,'' from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5), and (e)(8); and (g) of the Privacy Act of 1974.

EFFECTIVE DATE: This final rule is effective March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

SUPPLEMENTARY INFORMATION: The exemptions will be applied only to the extent that information in a record is subject to an exemption pursuant to 5 U.S.C. 552a(j) and (k).

On January 27, 2003 (68 FR 3847), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

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, this order will not have a significant

economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information 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, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems under the Privacy Act

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, and 534; 31 U.S. C. 3717 and 9701.

2. Section 16.98 is amended as follows:

(a) By revising paragraph (c)

(b) By revising the first sentence of paragraph (d)

(c) By removing paragraphs (g) and (h).

The revisions read as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—limited access.

* * * * *

(c) Systems of records identified in paragraphs (c)(1) through (c)(7) below are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d)(1), (2). (3) and (4); (e)(1), (2) and (3), (e)(5), (e)(8); and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) below are also exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) from subsections (c)(3); (d)(1), (2), (3) and (4); and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001)

(2) Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002)

(3) Investigative Reporting and Filing System (Justice/DEA–008)

(4) Planning and Inspection Division Records (Justice/DEA–010)

(5) Operation Files (Justice/DEA–011)

(6) Security Files (Justice/DEA–013)

(7) System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). * * *

* * * * *

Dated: March 14, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–6925 Filed 3–21–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 16

[FBI 109P; AAG/A Order No. 010–2003]

RIN 1110–AA08

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Federal Bureau of Investigation.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), is exempting the FBI's National Crime Information Center (NCIC) (JUSTICE/FBI–001), Central Records System (CRS) (JUSTICE/FBI–002), and National Center for the Analysis of Violent Crime (NCAVC) (JUSTICE/FBI–015) systems of records from the Privacy Act. The exemption is necessary to avoid interference with law enforcement functions and responsibilities of the FBI.

EFFECTIVE DATE: March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

SUPPLEMENTARY INFORMATION: The FBI is exempting the FBI's National Crime Information Center, Central Records System and National Center for the Analysis of Violent Crime systems of records from subsection (e)(5) of the Privacy Act, 5 U.S.C. 552a. Also, the FBI is correcting a typographical error by moving the title of the National Crime Information Center to the correct subsection. Except for these amendments, the final rule changes do not alter practices and procedures that are currently in effect. However, the FBI is currently reviewing additional changes to this regulation for possible promulgation in future rulemaking.

This rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of information, 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 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems under the Privacy Act.

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 16.96 is amended as follows:

(a) By revising the introductory text of paragraph (a);

(b) By redesignating paragraph (b)(6) as (b)(7) and adding a new paragraph (b)(6);

(c) By revising the introductory text of paragraph (g) and adding new paragraph (g)(1);

(d) By redesignating paragraph (h)(5) as (h)(6) and adding new paragraph (h)(5);

(e) By revising the introductory text of paragraph (j);

(f) By adding a new paragraph (k)(5);

(g) By removing ''National Crime Information Center (NOIC) [sic] (JUSTICE/FBI–001).'' from paragraph (k)(4).

The revisions and additions read as follows.

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g):

* * * * *

(b) * * *

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the

development of criminal intelligence necessary for effective law enforcement. In addition, because many of these records come from other federal, state, local, joint, foreign, tribal, and international agencies, it is administratively impossible to ensure compliance with this provision.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g):

(1) National Crime Information Center (NCIC) (JUSTICE/FBI–001). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(3).

(h) * * *

(5) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. In addition, the vast majority of these records come from other federal, state, local, joint, foreign, tribal, and international agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

* * * * *

(j) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G) and (H), (e)(5), (f) and (g):

* * * * *

(k) * * *

(5) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. In addition, because many of these records come from other federal, state, local, joint, foreign, tribal, and international agencies, it is administratively impossible to ensure compliance with this provision.

* * * * *

Dated: March 14, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–6926 Filed 3–21–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Family and Educational Travel-Related Transactions, Remittances of Inherited Funds, Activities of Cuban Nationals in the United States, Support for the Cuban People, Humanitarian Projects, and Technical Amendments

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Cuban Assets Control Regulations, part 515 of chapter V of 31 CFR, to implement the President's Initiative for a New Cuba and to make certain technical changes and clarifications.

DATES: *Effective Date:* March 24, 2003.

Comments: Written comments must be received no later than May 23, 2003.

ADDRESSES: Comments may be sent either via regular mail to the Chief of Records, ATTN Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, or via OFAC's Web site *(http://www.treas.gov/ofac).*

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622–2480, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov.* This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On May 20, 2002, President Bush announced his Initiative for a New Cuba to encourage freedom within Cuba, make life better for the Cuban people, and give the Cuban people greater control of their economic and political destiny. Among other steps, the President announced that the United States would ease restrictions on humanitarian assistance that directly serves the needs of the Cuban people and helps build Cuban civil society and would offer scholarships for Cuban professionals and students who are trying to build independent civil institutions in Cuba. The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is publishing this interim final rule amending the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), to assist in implementing these and other steps in the President's Initiative for a New Cuba. These amendments also make certain corrections to and provide certain clarifications of the Regulations.

Clarification and expansion of visits to close relatives in Cuba. These amendments clarify and expand the authorization of travel-related transactions incident to visiting close relatives in Cuba. Specifically, the general license in paragraph (a) of § 515.561 authorizing such transactions on an annual basis is amended to clarify that it may be used to visit only those close relatives who qualify as nationals of Cuba and not to visit those who are engaging in transactions in Cuba pursuant to an OFAC license (such as U.S. students authorized to engage in coursework in Cuba). Visits to persons in Cuba who are not Cuban nationals are now addressed in amended paragraph (c), discussed below.

Paragraph (a) of § 515.561 is also modified to authorize ''additional travel-related transactions that are

directly incident to the purpose of'' visiting close relatives in Cuba. Prior to this amendment, travelers visiting close relatives were restricted to those travel-related transactions set forth in § 515.560(c). These amendments allow travelers to exceed the per diem set forth in § 515.560(c) when such additional expenditures are for travel-related transactions that are directly incident to the purpose of visiting close relatives. For example, a traveler can now exceed the per diem in order to purchase transportation within Cuba to visit close relatives who live great distances from each other. Other changes are made to paragraph (a) to make the paragraph more readable. Paragraph (b) of § 515.561, which states OFAC's policy with respect to licensing transactions related to family visits that exceed the once-per-year limitation, also is amended to state that ''additional travel-related transactions'' may be authorized.

Former paragraph (c) has been moved to a new paragraph (d) and a new paragraph (c) is added to state OFAC's policy of issuing specific licenses on a case-by-case basis authorizing travel-related transactions incident to visiting close relatives in Cuba who are not nationals of Cuba. For example, the parents of a U.S. student who is authorized to attend classes for one year in Cuba can apply under new paragraph (c) for a license to engage in transactions incident to visiting their child. New paragraph (c) now contains this example.

The definition of ''close relative,'' now in new paragraph (d) of § 515.561, is expanded to include all relatives, whether by blood, marriage, or adoption, who are within three degrees of relationship with the traveler (*e.g.*, great-grandparents and second cousins). Prior to this amendment, the definition of ''close relative'' was restricted to two degrees of relationship (*e.g.*, grandparents and first cousins). Several examples are provided to assist the reader. Finally, the heading of § 515.561 is amended to refer to visits of ''close relatives'' instead of the more generic term ''family.''

Removal of people-to-people educational exchanges. These amendments eliminate the statement of licensing policy regarding case-by-case authorization of certain people-to-people educational exchanges. Pursuant to paragraph (b)(2) of § 515.565, OFAC has issued specific licenses to organizations that sponsor people-to-people educational exchanges to take individuals under their auspices on educational trips to Cuba unrelated to academic coursework. Specific licenses no longer will be granted for this purpose. In order to address the equities of those who already may have committed funds for future travel to Cuba pursuant to a specific license issued under this subparagraph, existing licensees will be allowed to engage in the transactions set forth in their licenses for the duration of those licenses, but no renewals or new licenses will be issued under this paragraph.

Changes to remittances rules. These amendments authorize licensed remittances to be made from blocked inherited funds, increase the limit on the number of remittances that can be carried to Cuba by an authorized traveler, restrict quarterly remittances from being sent to senior-level Cuban government or Cuban Communist Party officials, and simplify the remittance rules, located primarily in § 515.570 and, to a lesser extent, in § 515.560(c).

Former paragraphs (a) and (b) of § 515.570 authorized quarterly remittances of $300 per Cuban household, but only remitters who were close relatives of senior-level Cuban government officials or senior-level Cuban Communist Party officials were authorized to send the quarterly remittances to those officials' households. These amendments remove this distinction by making the households of senior-level Cuban government officials or senior-level Cuban Communist Party officials ineligible to receive quarterly remittances from any remitters. Accordingly, former paragraphs (a) and (b) are combined into one amended paragraph (a) to simplify the section. The new combined authorization is entitled ''Periodic $300 household remittances.''

Additional changes are made in the process of combining former paragraphs (a) and (b) into amended paragraph (a). First, the definition of the term ''close relative,'' which is no longer used in this section, is removed. Second, a reference is added directing the reader to new paragraph (c) of this section (discussed below), which authorizes licensed remittances to be made from certain blocked accounts containing inherited funds. These amendments also remove the discussion of remittances that may be carried to Cuba by authorized travelers because those rules are now set forth in their entirety in amended § 515.560(c) (discussed below).

Former paragraph (c) of § 515.570, which authorizes certain emigration-related remittances, is moved to new paragraph (b) and is shortened and simplified.

A new paragraph (c) is added to § 515.570 setting forth a new general license authorizing the periodic household and one-time emigration-related remittances authorized in amended paragraphs (a) and (b) to be made from certain inherited funds blocked in U.S. banking institutions. To qualify for this new general license, the blocked funds must be held in the name or for the benefit of the Cuban national payee and the payee's interest in those funds must have been created as a result of a valid testamentary disposition, intestate succession, or a life insurance policy or annuity contract triggered by the death of the policy or contract holder. OFAC is making this change in part to remedy the result that occurs when a U.S. remitter who regularly sends funds to a Cuban national dies and leaves part of his or her estate to that Cuban national. Prior to these amendments, those funds became inaccessible, eliminating the otherwise authorized flow of remittances to the Cuban national.

At the end of § 515.570, a new note is added referring the reader to amended paragraph (c)(4) of § 515.560 (discussed below) for the rules relating to the carrying of authorized remittances to Cuba by persons authorized to engage in travel-related transactions in Cuba. This note also advises that the provision of remittance forwarding services is prohibited without OFAC authorization, explains that banking institutions are authorized to provide these services, and references OFAC's Website list of all other authorized remittance forwarding service providers.

Section 515.560 is amended to address rules regarding the carrying of authorized remittances to Cuba. Paragraph (c)(4) of § 515.560 is amended to raise the amount of authorized $300 quarterly household remittances a licensed traveler may carry to Cuba from a total of $300 to $3,000. Thus, a licensed traveler may now carry up to ten $300 household remittances to Cuba (provided that he or she meets all of the remittance authorization requirements set forth in § 515.570(a)). Amended § 515.560(c)(4) continues to state that all remittances carried to Cuba by an authorized traveler must be the traveler's own authorized remittances.

Activities in the United States by visiting Cuban nationals. These amendments streamline the authorization of transactions in the United States by visiting Cuban nationals who are issued U.S. visas for the purpose of engaging in certain activities, such as academic or vocational study, teaching, or performing. Currently, section 515.571

authorizes Cuban nationals visiting the United States to engage in transactions such as paying living expenses, engaging in normal banking transactions incident to travel in the United States, and withdrawing limited amounts of funds from blocked accounts for these purposes. These amendments add a new paragraph (a)(5) to § 515.571 to provide a general license authorizing all transactions by Cuban nationals visiting the United States that are ordinarily incident to the activities for which their visas were issued. This license does not authorize receipt of compensation in excess of that needed to cover living expenses and the acquisition of goods for personal consumption in the United States, although a reference is made to § 515.565(a)(2)(v), under which OFAC may authorize the payment to certain Cuban scholars of stipends or salaries that exceed this limit. Examples are provided to assist the reader. This new general license will automatically authorize a Cuban performer's transactions, such as renting a stage, signing a contract to perform, and hiring sound and lighting technicians, if that performer is issued a P (performance) visa. Similarly, Cuban nationals issued student visas are authorized to register and enroll in courses at a U.S. university. Persons in the United States who need to transact with such Cuban nationals will need only to confirm the visa status of the Cuban nationals to determine whether certain transactions are authorized.

Status of Cuban nationals who leave Cuba. These amendments clarify the authorization of certain transactions with Cuban nationals who permanently leave Cuba by making various changes to § 515.505. OFAC is amending § 515.505 to identify three different categories of Cuban national individuals who have left Cuba. As amended, paragraph (a)(1) applies to Cuban national individuals who have taken up residence in the United States, have an adjustment of status application pending or have become permanent resident aliens or citizens of the United States, and who are not specially designated nationals of Cuba; paragraph (b) continues to apply to Cuban national individuals who have taken up permanent residence in a third country; and paragraph (c) addresses Cuban national individuals who have been paroled into the United States.

Paragraph (a) of § 515.505 licenses as unblocked nationals any Cuban nationals who have taken up residence in the United States, have become U.S. citizens or permanent resident aliens of the United States (or have pending applications for adjustment of status), and are not specially designated nationals of Cuba. All transactions with such individuals are authorized, and such individuals can apply to and receive authorization from OFAC to have unblocked any assets in which they have an interest. Cuban national individuals who do not meet these requirements are not licensed as unblocked nationals, even if such persons otherwise appear to be ''resident in'' the United States.

Paragraph (b) of § 515.505 continues to provide that Cuban national individuals who have taken up permanent residence in a third country can apply to OFAC to be specifically licensed as unblocked nationals. This paragraph is amended to include a list of documents that should be provided in such license applications. Persons subject to U.S. jurisdiction who are considering engaging in transactions in a third county with a Cuban national individual who is not a U.S. national or permanent resident alien should first confirm that that Cuban national has been issued a specific letter from OFAC licensing the Cuban national as an unblocked national. Absent such a license, transactions with that Cuban national are prohibited.

A note is added to paragraphs (a) and (b) explaining that an individual who is unblocked pursuant to either of those paragraphs does not become blocked again simply by ending his or her residence in the United States unless he or she becomes domiciled or a permanent national of Cuba.

Former paragraph (c) of § 515.505 is moved to new paragraph (d) and a new paragraph (c) is added providing a new general license authorizing most transactions with Cuban national individuals who are paroled into the United States and remain in the United States pursuant to that grant of parole. The only difference in embargo status between Cuban nationals licensed as unblocked nationals and those in the United States pursuant to a grant of parole is that the later generally will not be able to obtain specific licenses unblocking any of their property that was blocked in the United States prior to the grant of parole. Such unblocking licenses normally are granted only once a Cuban national is licensed as an unblocked national. Paragraph (c) provides an authorization, however, for individuals in the United States on a grant of parole to withdraw a total of not more than $250 each month from their blocked accounts.

A new paragraph (e) is added to provide examples that illustrate the application of § 515.505. A note is added at the end of § 515.505 to provide a cross-reference to § 515.571 (discussed above), which authorizes certain transactions incident to travel to, from, and within the United States by blocked Cuban nationals who are temporarily visiting the United States.

Expansion of Support for the Cuban People and Humanitarian Programs. These amendments expand the statements of specific licensing policy regarding transactions that provide support for the Cuban people (§ 515.574) and transactions incident to Cuba-related humanitarian projects (§ 515.575). In § 515.574, paragraph (a) is enlarged to include as licensable those activities of independent organizations designed to promote a rapid, peaceful transition to democracy. In § 515.575, the list of licensable humanitarian activities is enlarged to include construction projects intended to benefit legitimately independent civil society groups and formal (as well as non-formal) educational training within Cuba and elsewhere on topics including civic education, journalism, advocacy, and organizing.

Section 515.575 no longer addresses projects that involve only the donation of goods to meet basic humanitarian needs. Applicants wishing to engage in such transactions should apply under § 515.533(e), which already provides a statement of licensing policy regarding travel transactions related to exports to Cuba. Applicants whose projects include humanitarian activities in Cuba beyond mere exportation, delivery, and servicing of donated goods should still apply under § 515.575.

Technical Corrections and Clarifications. These amendments make various technical corrections and clarifications to the Regulations. The definition of the term ''national'' contained in § 515.302 is amended to clarify that persons whose transactions in Cuba are authorized by OFAC are not considered nationals of Cuba and that any Cuba-located office or sub-unit of an organization is considered a national of Cuba, whether or not the entire organization of which the office or sub-unit is a part is a national of Cuba. The definition of the terms ''person subject to the jurisdiction of the United States'' and ''person within the United States,'' found in §§ 515.329 and 515.330 respectively, are amended to clarify that non-corporate entities may also be subject to U.S. jurisdiction.

Section 515.420 is amended to clarify that ''fully-hosted'' status only removes liability for travel-related transactions and not for transactions that are not directly incident to travel, such as services provided in Cuba to a third-country entity.

New § 515.512 formalizes existing practice with respect to provision of legal services. Persons subject to U.S. jurisdiction are authorized to provide certain legal services to Cuba or Cuban nationals but must be licensed to receive payment.

Section 515.533 is amended by adding a new general license to paragraph (b) authorizing persons subject to U.S. jurisdiction to negotiate and sign contracts with Cuban nationals for sales of products from the United States or 100% U.S.-origin products from overseas subsidiaries provided such exports are consistent with current Department of Commerce licensing policy and provided performance of such contracts is expressly made contingent upon the prior authorization by the Department of Commerce. This change further implements the Trade Sanctions Reform and Export Enhancement Act of 2000. Various other technical correction and clarifications are made to § 515.533.

Section 515.559 is clarified to better explain the effects of the Cuban Democracy Act of 1992 (the ''CDA''). A note is added to paragraph (b) explaining how the CDA prohibited all but certain specific classes of licenses from being issued under this section. Paragraph (d) of § 515.559 is deleted to clarify that persons within the United States can be involved with the licensed export activities of foreign subsidiaries that receive authorization pursuant to § 515.559.

A new paragraph is added to § 515.567 to clarify that travel-related transactions for attendance at and participation in clinics and workshops in Cuba will only be given if the clinic or workshop is organized and run, at least in part, by the licensee. This section is not meant to be used by individuals wishing to travel to Cuba to engage in such activities when they are organized solely by Cuban entities.

Finally, § 515.572 is amended to reflect that the current licenses for carrier, travel, and remittance forwarding service providers only require annual instead of quarterly reports.

Request for Comments; Procedural Requirements

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the Regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the Regulations.

The period for submission of comments will close May 23, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such submission to the originator without considering them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these Regulations will be a matter of public record. Copies of the public record concerning these Regulations will be made available not sooner than June 23, 2003 and will be obtainable from OFAC's Web site (*http://www.treas.gov/ofac*). If persons are not able to use that service, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, Attn: Chief, Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, Banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign trade, Imports, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Travel restrictions, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for 31 CFR part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart C—General Definitions

2. Amend § 515.302 by revising paragraph (a) to read as follows:

§ 515.302 National.

(a) The term national when used with respect to a country shall include:

(1) A subject or citizen of that country or any person who has been domiciled in or a permanent resident of that country at any time on or since the ''effective date,'' except persons who were permanent residents of or domiciled in that country in the service of the U.S. Government and persons whose transactions in that country were authorized by the Office of Foreign Assets Control.

(2) Any partnership, association, corporation, or other organization that, on or since the effective date:

(i) Was or has been organized under the laws of that country;

(ii) Had or has had its principal place of business in that country; or

(iii) Was or has been controlled by, or a substantial part of the stocks, share, bonds, debentures, notes, drafts, or other securities or obligations of which was or has been controlled by, directly or indirectly, that country and/or one or more nationals thereof.

(3) Any organization's office or other sub-unit that is located within that country.

(4) Any person to the extent that such person, on or since the ''effective date''

was or has been acting or purporting to act directly or indirectly for the benefit or on behalf of any national of that country.

(5) Any other person who there is reasonable cause to believe is a ''national'' as defined in this section.

* * * * *

3. Amend § 515.329 by revising paragraphs (c) and (d) to read as follows:

§ 515.329 Person subject to the jurisdiction of the United States.

* * * * *

(c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and

(d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.

4. Amend § 515.330 by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 515.330 Person within the United States.

(a) * * *

(3) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and

(4) Any corporation, partnership, association, or other organization, wherever organized or doing business, which is owned or controlled by any person or persons specified in paragraphs (a)(1) or (a)(3) of this section.

* * * * *

Subpart D—Interpretations

5. Amend § 515.420 by revising the introductory text of paragraph (a) and adding a note to paragraph (a) to read as follows:

§ 515.420 Fully-hosted travel to Cuba.

(a) A person subject to the jurisdiction of the United States will not be considered to violate the prohibition on engaging in travel-related transactions in which Cuba has an interest when all costs of, and all transactions related to, the travel of that person (the ''fully-hosted'' traveler) are covered or entered into by a person not subject to the jurisdiction of the United States, provided that:

* * * * *

Note to paragraph (a): The interpretation set forth in this paragraph applies only to a fully-hosted traveler's travel-related transactions and not to other transactions in Cuba. For example, a fully-hosted traveler is still prohibited from providing services in Cuba to a third-country national.

Subpart E—Licenses, Authorizations, and Statement of Licensing Policy

6. Revise § 515.505 to read as follows:

§ 515.505 Certain Cuban nationals unblocked; transactions of Cuban nationals paroled into the United States.

(a) General license unblocking certain persons. The following persons are licensed as unblocked nationals, as that term is defined in § 515.307 of this part:

(1) Any individual who:

(i) Has taken up residence in the United States;

(ii) Is a United States citizen, a permanent resident alien of the United States, or has applied to become a permanent resident alien of the United States and has an adjustment of status application pending; and

(iii) Is not a specially designated national; and

(2) Any entity that otherwise would be a national of Cuba solely because of the interest therein of an individual licensed in paragraph (a)(1) of this section as an unblocked national.

Note to paragraph (a): An individual unblocked pursuant to this paragraph does not become blocked again by leaving the United States unless he or she becomes domiciled or a permanent national of Cuba or otherwise becomes a specially designated national.

(b) Specific licenses unblocking individuals permanently resident in third countries. Individual nationals of Cuba who have taken up permanent residence in the authorized trade territory may apply to the Office of Foreign Assets Control to be specifically licensed as unblocked nationals. Applications for specific licenses under this paragraph should include at least two of the following documents issued by the government authorities of the new country of permanent residence: Passport; voter registration card; permanent resident alien card; or national identity card. Other documents tending to show residency, such as income tax returns, also may be submitted in support of government documentation, but are not themselves sufficient.

Note to paragraph (b): An individual unblocked pursuant to this paragraph does not become blocked again by leaving the United States unless he or she becomes domiciled or a permanent national of Cuba or otherwise becomes a specially designated national.

(c) General license authorizing certain transactions of individuals paroled into the United States. An individual national of Cuba who has been paroled into the United States is authorized to engage in all transactions available to unblocked nationals, as that term is defined in § 515.307 of this part, except that all property in which the individual has an interest and that was blocked pursuant to this part prior to the date on which parole was granted shall remain blocked. Such an individual is further authorized to withdraw a total amount not to exceed $250 in any one calendar month from any blocked accounts held in the individual's name.

(d) The licensing of any person pursuant to this section shall not suspend the requirements of any section of this chapter relating to the maintenance or production of records.

(e) The following examples illustrate the application of this section:

(1) Example 1: A national of Cuba with a blocked U.S. bank account receives a U.S immigration visa. Upon arrival in the United States, she is issued a permanent resident alien card and thereby is licensed as an unblocked national pursuant to paragraph (a) of this section. She can apply immediately to OFAC for a specific license to have her bank account unblocked.

(2) Example 2: A national of Cuba with a blocked U.S. bank account arrives in the United States without a valid visa and is paroled into the United States. One year later, he applies for and receives permanent resident alien status. From the date he is paroled into the United States until the date he applies for permanent resident alien status, he qualifies for the general license contained in paragraph (c) of this section. During this time he can engage in all transactions as if he is an unblocked national, but he cannot gain access to his blocked bank account other than to withdraw $250 each month. Beginning with his application to become a permanent resident alien, he is licensed as an unblocked national pursuant to paragraph (a) of this section. At this time, he can apply to OFAC for a specific license to have his bank account unblocked.

(3) Example 3: A national of Cuba with a blocked U.S. bank account arrives in the United States on a temporary visa valid for six months. After her visa expires, she remains in the United States for an additional six months and then applies to become a permanent resident alien. She has an adjustment of status application pending until she receives permanent resident alien status one year later. From her arrival in the United States until her application for permanent resident alien status, she does not qualify for any of the authorizations contained in this section. Instead, she is authorized by § 515.571 only to engage in transactions ordinarily incident to her travel and maintenance in the United States and to withdraw $250 each month from her blocked account to cover her living expenses. Beginning with her application to become a permanent resident alien, she is licensed as an unblocked national pursuant to paragraph

(a) of this section. At this time, she can apply to OFAC for a specific license to have her bank account unblocked.

Note to § 515.505: See § 515.571 for the authorization of certain limited transactions incident to travel to, from, and within the United States by Cuban nationals who enter the United States on a non-immigrant visa or other non-immigrant travel authorization issued by the State Department.

7. Section 515.512 is added read as follows:

§ 515.512 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of Cuba or a Cuban national is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to Cuba or a Cuban national, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property in which Cuba or a Cuban national has had an interest at any time on or since 12:01 a.m., e.s.t., July 8, 1963, is prohibited except to the extent otherwise provided by law or unless otherwise authorized by or pursuant to this part.

8. Revise § 515.533 to read as follows:

§ 515.533 Transactions incident to exportations from the United States and reexportations of U.S.-origin items to Cuba; negotiation of executory contracts.

(a) All transactions ordinarily incident to the exportation of items from the United States, or the reexportation of U.S.-origin items from a third country, to any person within Cuba are authorized, provided that:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–0420) (see the Export Administration Regulations, 15 CFR 730–774); and

(2) Only the following payment and financing terms may be used:

(i) Payment of cash in advance;

(ii) For authorized sales of agricultural items, financing by a banking institution located in a third country provided the banking institution is not a designated national, U.S. citizen, U.S. permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches). Such financing may be confirmed or advised by a U.S. banking institution; or

(iii) For all other authorized sales, financing by a banking institution located in a third country provided the banking institution is not a designated national or a person subject to the jurisdiction of the United States. Such financing may be confirmed or advised by a U.S. banking institution.

Note to paragraph (a): The transactions authorized by this paragraph include, but are not limited to, all transactions that are directly incident to the shipping of specific exports or reexports (*e.g.,* insurance and transportation of the exports to Cuba). Transactions that are not tied to specific exports or reexports, such as transactions involving future (non-specific) shipments, must be separately licensed by OFAC. For the waiver of the prohibitions on entry into U.S. ports contained in § 515.207 for vessels transporting shipments of items between the United States and Cuba pursuant to this section, see § 515.550.

(b) Persons subject to the jurisdiction of the United States are authorized to engage in all transactions ordinarily incident to negotiation of and entry into executory contracts for the sale of items that may be exported from the United States to Cuba or 100% U.S.-origin items that may be reexported from a third country to Cuba consistent with the export licensing policy of the Department of Commerce, provided that performance of such executory contracts is expressly made contingent on the prior authorization by the Department of Commerce.

Note to paragraph (b): This paragraph does not authorize transactions related to travel to, from, or within Cuba. See paragraph (e) for a statement of specific licensing policy with respect to such transactions.

(c) This section does not authorize:

(1) The financing of any transactions from any blocked account.

(2) Any transaction involving, directly or indirectly, property in which any designated national, other than a person located in the country to which the exportation or reexportation is consigned, has an interest or has had an interest since the effective date set forth in § 515.201 of this part.

(d) [Reserved]

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing of exports that appear consistent with the export or re-export licensing policy of the Department of Commerce.

9. Amend § 515.559 by removing paragraph (d) and adding a note to the end of the paragraph (b) to read as follows:

§ 515.559 Transactions by U.S.-owned or controlled foreign firms with Cuba.

* * * * *

(b) * * *

Note to paragraph (b): On October 23, 1992, sections 1705 and 1706 of the Cuban Democracy Act of 1992, Pub. L. 102–484 (Oct. 23, 1992) (codified at 22 U.S.C. 6004 and 6005, respectively), prohibited OFAC from issuing licenses for any transaction described in this paragraph other than those transactions currently set forth in paragraph (a).

* * * * *

10. Amend § 515.560 by revising paragraph (c)(4) and by adding a note to paragraph (c)(4) to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

* * * * *

(c) * * *

(4) Carrying remittances to Cuba. The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to § 515.570 provided that:

(i) The total of all household remittances authorized by § 515.570(a) does not exceed $3,000, and

(ii) No emigration remittances authorized by § 515.570(b) are carried to Cuba unless a U.S. immigration visa has been issued for each payee and the licensed traveler can produce the visa recipients' full names, dates of birth,

visa numbers, and visa dates of issuance.

Note to paragraph (c)(4): This paragraph does not authorize a traveler to carry remittances on behalf of other remitters.

* * * * *

11. Revise § 515.561 to read as follows:

§ 515.561 Persons visiting close relatives in Cuba.

(a) General license for visiting a close relative who is a national of Cuba once in any 12-month period. Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in § 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a close relative who is a national of Cuba, as that term is defined in § 515.302 of this part. The authorization contained in this paragraph may be used only once in any 12-month period. Any transactions related to additional family visits must be specifically licensed pursuant to paragraph (b) of this section.

(b) Specific licenses for visiting a close relative who is a national of Cuba more than once in any 12-month period. Specific licenses may be issued on a case-by-case basis authorizing persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them to engage in the travel-related transactions set forth in § 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a close relative who is a national of Cuba, as that term is defined in § 515.302 of this part, more than once in any 12-month period.

(c) Specific licenses for visiting a close relative who is not a national of Cuba. Specific licenses may be issued on a case-by-case basis authorizing persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them to engage in the travel-related transactions set forth in § 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a close relative who is not a national of Cuba, as that term is defined in § 515.302 of this part.

Example to paragraph (c): If your daughter is a U.S. national engaging in a year-long course of study in Cuba, you need a specific license issued pursuant to this paragraph (c) to engage in transactions incident to traveling to Cuba to visit her.

(d) For the purpose of this section, the term close relative used with respect to any person means any individual related to that person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person.

Example to paragraph (d): Your mother's cousin is your close relative for the purposes of this section, because you are both no more than three generations removed from your great-grandparents, who are the ancestors you have in common. Similarly, your husband's great-grandson is your close relative for the purposes of this section, because he is no more than three generations removed from you. Your daughter's father-in-law is not your close relative for the purposes of this section, because you have no common ancestor.

§ 515.565 [Amended]

12. Amend § 515.565 by removing the word ''or'' and the semicolon at the end of paragraph (b)(1) and adding a period in its place, and by removing and reserving paragraph (b)(2).

13. Amend § 515.567 by revising paragraphs (b) and (c) and adding a note to the section to read as follows:

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

* * * * *

(b) Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba by participants in such activities, provided that:

(1) The event is open for attendance, and in relevant situations participation, by the Cuban public;

(2) All U.S. profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of promoting people-to-people contacts or otherwise benefiting the Cuban people; and

(3) Any clinics or workshops in Cuba must be organized and run, at least in part, by the licensee. In general, an individual's attendance at a purely Cuba-organized clinic or workshop will not be authorized pursuant to this paragraph.

(c) Specific licenses will not be issued pursuant to this section authorizing any debit to a blocked account.

Note to § 515.567: See § 515.571 for the authorization of certain transactions related to the activities of nationals of Cuba traveling in the United States.

14. Revise § 515.570 to read as follows:

§ 515.570 Remittances to nationals of Cuba.

(a) Periodic $300 household remittances authorized. Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to Cuban households (including to Cuban individuals living alone) located in Cuba or in the authorized trade territory provided that:

(1) The remitter's total remittances do not exceed $300 per Cuban household in any consecutive 3-month period, regardless of the number of individuals comprising that household;

(2) The remittances are not made from a blocked source unless:

(i) The remittances are authorized pursuant to paragraph (c) of this section; or

(ii) The remittances are made to a Cuban household in a third country and are made from a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, the payee.

(3) No member of the payee's household is a senior-level Cuban government official or senior-level communist party official.

Note to paragraph (a): The maximum amount set forth in this paragraph does not apply to remittances to a Cuban individual who has been unblocked or whose current transactions are otherwise authorized pursuant to § 515.505, because remittances to such persons do not require separate authorization.

(b) Two one-time $500 emigration-related remittances authorized. Persons subject to the jurisdiction of the United States are authorized to remit the following amounts:

(1) Up to $500 per payee on a one-time basis to any Cuban nationals for the purpose of covering the payees' preliminary expenses associated with emigrating from Cuba to the United States. These remittances may be sent before the payees have received valid visas issued by the State Department or other approved U.S.-immigration documents, but may not be carried by a licensed traveler to Cuba until the payees have received valid visas issued by the State Department or other approved U.S.-immigration documents. See § 515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (c) of this section.

(2) Up to an additional $500 per payee on a one-time basis to any Cuban nationals for the purpose of enabling the payees to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of exit or third-country visa fees or other travel-related fees. These remittances may be sent only once the payees have received valid visas issued by the State Department or other approved U.S.-immigration documents. A remitter must be able to provide the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance. See § 515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (c) of this section.

(c) Certain remittances from inherited blocked sources authorized. The remittances authorized in paragraphs (a) and (b) of this section may be made from a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, the payee, provided that the funds were deposited in the blocked account as a result of a valid testamentary disposition, intestate succession, or payment from a life insurance policy or annuity contract triggered by the death of the policy or contract holder.

(d) Specific licenses. Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction to independent non-governmental entities in Cuba.

(2) Remittances by persons subject to U.S. jurisdiction from blocked accounts to Cuban households in third countries in excess of the amount specified in paragraph (a) of this section; or

(3) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in Cuba to the United States under circumstances where humanitarian need is demonstrated, including but not limited to illness or other medical emergency.

Note to § 515.570: For the rules relating to the carrying of remittances to Cuba by licensed travelers to Cuba, see paragraph (c)(4) of § 515.560. Persons subject to the jurisdiction of the United States are prohibited from engaging in the collection or forwarding of remittances to Cuba unless authorized pursuant to § 515.572 of this part. Pursuant to § 515.572, all depository institutions (*e.g.*, banks) are authorized to provide such services. For a list of other authorized U.S. remittance service providers, see the following Web site: *http://www.treas.gov/offices/enforcement/ofac/sanctions/cuba_tsp.pdf.*

15. Amend § 515.571 by revising the introductory text of paragraph (a) and by adding a new paragraph (a)(5) and note to the section to read as follows:

§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) Except as provided in paragraph (c) of this section, the following transactions by or on behalf of a Cuban national who enters the United States on a non-immigrant visa or other non-immigrant travel authorization issued by the State Department are authorized:

* * * * *

(5) All transactions ordinarily incident to the activities for which a visa or other travel authorization was issued.

(i) This paragraph (a)(5) does not authorize receipt of compensation in excess of amounts covering living expenses and the acquisition of goods for personal consumption. See § 515.565(a)(2)(v) of this part for the case-by-case authorization of payments to certain Cuban scholars of stipends or salaries that exceed this limit.

(ii) Examples of transactions authorized by this paragraph (a)(5) include: the payment of tuition to a U.S. educational institution by a national of Cuba issued a student visa; the payment of compensation covering only living expenses and the purchase of goods for personal consumption to a national of Cuba issued a performance-related visa; and the rental of a stage by a Cuban group issued a performance visa.

* * * * *

Note to § 515.571: For the authorization of certain transactions by Cuba nationals who become U.S. citizens, apply for or receive U.S. permanent resident alien status, or are paroled into the United States, see § 515.505 of this part.

§ 515.572 [Amended]

16. Amend paragraph (d) of § 515.572 by replacing the word ''quarterly'' each time it appears with the word ''annual'' and by replacing the words ''three-month'' with the words ''one-year.''

17. Revise § 515.574 to read as follows:

§ 515.574 Support for the Cuban People.

(a) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are intended to provide support for the Cuban people including, but not limited to, the following:

(1) Activities of recognized human rights organizations,

(2) Activities of independent organizations designed to promote a rapid, peaceful transition to democracy, and

(3) Activities of individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba.

(b) Licenses will be issued pursuant to this section once the applicant shows that the proposed transactions are consistent with the purposes of this section and provides an explanation that no significant accumulation of funds or financial benefit will accrue to the government of Cuba.

18. Revise § 515.575 to read as follows:

§ 515.575 Humanitarian projects.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to certain humanitarian projects in or related to Cuba not otherwise covered by this part that are designed to directly benefit the Cuban people. Such projects may include, but are not limited to: medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; environmental projects; projects involving formal or non-formal educational training, within Cuba or off-island, on topics including civil education, journalism, advocacy and organizing, adult literacy, and vocational skills; community-based grassroots projects; projects suitable to the development of small scale private enterprise; projects that are related to agricultural and rural development that promote independent activity; and projects to meet basic human needs. Specific licenses may be issued authorizing transactions for multiple visits for the same project over an extended period of time by applicants demonstrating a significant record of overseas humanitarian projects.

Dated: March 5, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 5, 2003.

Kenneth E. Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–6808 Filed 3–19–03; 11:25 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–012]

Drawbridge Operating Regulations; Gulf Intracoastal Waterway, Grand Lake, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 384 (Grand Lake) pontoon bridge across the Gulf Intracoastal Waterway, mile 231.4 West of Harvey Locks, at Grand Lake, Cameron Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for two four-hour periods, Monday through Thursday, from April 7 through May 22, 2003. The deviation is necessary to allow for the repairs to the fender system of the bridge.

DATES: This deviation is effective from 7 a.m. on Monday, April 7, 2003 until 5 p.m. on Thursday, May 22, 2003.

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

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

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to repair the fender system of the bridge for the continued safe operation of the bridge. This deviation allows the draw of the SR 384 (Grand Lake) pontoon bridge across the Gulf Intracoastal Waterway, mile 231.4 West of Harvey Locks, at Grand Lake, Cameron Parish, Louisiana to remain closed to navigation from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. daily, Monday through Thursday, from April 7, 2003 through May 22, 2003.

The pontoon bridge has no vertical clearance in the closed-to-navigation position. The bridge normally opens to pass navigation an average of 1005 times a month. In accordance with 33 CFR 117.5, the bridge opens on signal for the passage of vessels. The bridge will be able to open for emergencies during the closure period; however, pile-driving equipment will have to be secured and moved prior to the opening of the bridge. Navigation on the waterway consists mainly of tugs with tows and some fishing vessels. The delay of up to four hours for six weeks will not have a significant effect on these vessels. No practical alternate route is readily available.

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

Dated: March 12, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–6915 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–010]

Drawbridge Operation Regulations; Bayou Lafourche, Golden Meadow, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Golden Meadow Vertical Lift Span Highway Bridge across Bayou Lafourche, mile 23.9, at Golden Meadow, Lafourche Parish, LA. This deviation allows the bridge to remain closed to navigation on March 25, 2003. The deviation is necessary to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 7 a.m. through 3 p.m. on March 25, 2003.

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

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

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to remove and replace defective shaft couplings on the main gear box of the vertical lift span bridge across Bayou Lafourche at mile 23.9 at Golden Meadow, Lafourche Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. through 3 p.m. on Tuesday, March 25, 2003.

The vertical lift span bridge has a vertical clearance of 2.91 feet above mean high water, elevation 3.0 feet Mean Sea Level and 5.91 feet above mean low water, elevation 0.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists of barge tows, construction equipment, dredges, fishing, shrimp and pleasure craft, much of which is primarily skiffs and push boats. This eight hour closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 20 times per day during the trawling off-season. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No practical alternate routes are available.

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

Dated: March 12, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–6914 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Pittsburgh–02–019]

RIN 1625–AA00 (Formerly RIN 2115–AA97)

Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone encompassing all waters extending 200 feet from the water's edge of the left descending bank of the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect Pittsburgh Plate Glass Industries (PPG), persons and vessels from subversive or terrorist acts. Entry of persons and vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective beginning March 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh–02–019] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA 15222–1371, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) Michael Marsula, Marine Safety Office Pittsburgh at (412) 644–5808 x2114.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 16, 2002, the Coast Guard published a notice of proposed rulemaking entitled ''Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia'', in the **Federal Register** (67 FR 77008). We received no comments on the proposed rule. No public hearing was requested, and none was held.

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.** This final rule maintains the status quo for the security zone. We received no comments on either the temporary final rule or the NPRM. Delaying its effective date would be contrary to public interest because immediate action is needed to continue to respond to existing security risks.

Background and Purpose

The Captain of the Port Pittsburgh established a temporary security zone for the area adjacent to PPG that expired June 15, 2002 [COTP Pittsburgh-02-001] (67 FR 9589, March 4, 2002). No comments or objections were received concerning this rule. National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to those continued threats, heightened awareness and security of our ports and harbors is necessary. The Captain of the Port has established a temporary security zone for this area [COTP Pittsburgh-02-019] (67 FR 58332). That temporary final rule was published in the **Federal Register** on September 16, 2002. Advisories regarding continued threats of terrorism have revealed the need for a continuous security zone to protect PPG, persons, and vessels from subversive or terrorist attacks. This security zone includes the waters of the Ohio River extending 200 feet from the water's edge of the left descending bank between mile markers 119.0 and 119.8.

The Captain of the Port, Pittsburgh has determined that there is a need for this security zone to remain in effect indefinitely because of the continued threat of terrorism and the nature of the material handled at PPG.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have made no substantive changes to the provisions of the proposed rule.

Regulatory Evaluation

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

This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone. Vessels may be permitted to enter the security zone on a case-by-case basis.

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 would not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this rule. The navigable channel remains open to all vessel traffic. We received no comments or objections regarding the previous security zone covering the same area.

If you are a small business entity and are significantly affected by this regulation please contact PO Michael Marsula, U.S. Coast Guard Marine Safety Office Pittsburgh, Suite 1150, Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA at (412) 644–5808, X2114.

Assistance for Small Entities

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would 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 will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have 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 this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.822 to read as follows:

§ 165.822 Security Zone; Ohio River Mile 119.0 to 119.8 Natrium, WV.

(a) *Location.* The following area is a security zone: the waters of the Ohio River extending 200 feet from the water's edge of the left descending bank between mile markers 119.0 and 119.8.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or a designated representative.

(2) Persons or vessels desiring to transit the area of the security zone may contact the Captain of the Port Pittsburgh at telephone number 412–644–5808 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Pittsburgh or a designated representative.

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

Dated: March 10, 2003.

Steve L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.

[FR Doc. 03–6916 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 078–0068; FRL–7460–9]

Revision to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). This action was proposed in the **Federal Register** on October 11, 2002 and concerns definitions, volatile organic compound (VOC) emissions from dry cleaning plants, VOC emissions from spray painting operations, and particulate matter (PM–10) emissions from mobile sources. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs Arizona to correct the deficiencies in the submitted rules.

EPA is also finalizing a full approval of a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona SIP. This action was proposed in the **Federal Register** on October 11, 2002 and concerns VOC emissions from petroleum storage vessels and PM–10 emissions from mobile sources.

EFFECTIVE DATE: Today's final rule is effective on April 23, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect a copy of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

A copy of the rule may also be available via the Internet at *http://www.sosaz.com/public_services/Title 18/18–02.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

I. Proposed Action

On October 11, 2002 (67 FR 63354), EPA published a notice of proposed rulemaking (NPRM) proposing a limited approval and limited disapproval of the rules in table 1 that were submitted for incorporation into the Arizona SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ADEQ	R18–2–701	Definitions	11/15/93	07/15/98
ADEQ	R18–2–725	Standards of Performance for Existing Dry Cleaning Plants	11/15/93	07/15/98
ADEQ	R18–2–727	Standards of Performance for Spray Painting Operations	11/15/93	07/15/98
ADEQ	R18–2–801	Classification of Mobile Sources	11/15/93	07/15/98
ADEQ	R18–2–802	Off-Road Machinery	11/15/93	07/15/98

A summary of the deficiencies identified in these rules follows. Rule R18–2–701 has the following deficiencies:

- ''Calcine'' should not be limited to only lime plants.
- ''Process Weight'' should be eliminated, because it has no meaning unless it is given for a specific time period.
- ''Process Weight Rate'' should be defined in the rule and not be based on Rule R18–2–702, which is not in the SIP.

Rule R18–2–725 has the following deficiencies:

- The enforceability is limited, because there are no monitoring and recordkeeping requirements.
- The enforceability is limited, because there is no test method given for the efficiency of recovery of solvent emissions.

Rule R18–2–727 has the following deficiencies:

- The enforceability is limited, because there are no monitoring and recordkeeping requirements.
- The enforceability is limited, because there is no test method given for the efficiency of recovery of overspray.

Rules R18–2–801 and R18–2–802 have the following deficiencies:

- The rules should be restricted to apply to used or in-use nonroad engines and not to new nonroad engines. Section 209(e) of the CAA prohibits states from adopting or attempting to enforce any standard relating to the control of emissions from (A) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower and (B) new (or remanufactered) locomotives or new (or remanufactered) engines which are used in locomotives. States are not precluded under section 209(e) from regulating the use and operation of nonroad engines, including regulating daily mass emission limits (such as through an opacity standard), once the engine is no longer new, according to 40 CFR part 89, subpart A, appendix A.
- The rules should exclude from applicability locomotives or engines which are used in locomotives. Locomotives are required to be in compliance with federal emission standards throughout their useful life.
- The rules should exempt nonroad engines from any potential requirement to retrofit in order to meet the opacity standard unless California has an identical retrofitting requirement. States are precluded from requiring retrofitting of used nonroad engines to meet emission standards, except that States may adopt and enforce retrofitting requirements identical to California retrofitting requirements which have been authorized by EPA, according to 40 CFR part 89, subpart A, appendix A.

At the same time, EPA published a notice of proposed rulemaking (NPRM) proposing a full approval of the rules in table 2 that were submitted for incorporation into the Arizona SIP.

TABLE 2.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ADEQ	R18–2–710	Standards of Performance for Existing Vessels for Petroleum Liquids.	11/15/93	07/15/98
ADEQ	R18–2–803	Heater-Planer Units	11/15/93	07/15/98
ADEQ	R18–2–804	Roadway and Site cleaning Machinery	11/15/93	07/15/98
ADEQ	R18–2–805	Asphalt or Tar Kettles	11/15/93	07/15/98

The NPRM contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of submitted Rules 701, 725, 727, 801, and 802. This action incorporates the submitted rules into the Arizona SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. Sanctions will not be imposed under section 179 of the CAA according to 40 CFR 52.31, because the rules are not required submittals. Note that the submitted rules have been adopted by the ADEQ, and EPA's final limited

disapproval does not prevent the local agency from enforcing them.

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is also finalizing a full approval of submitted Rules 710, 803, 804, and 805. This action incorporates the submitted rules into the Arizona SIP.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. 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. Thus, Executive Order 13175 does not apply to this rule.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

G. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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). This rule will be effective April 23, 2003.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 19, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(110) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(110) New and amended regulations were submitted on July 15, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Rules R18–2–701, R18–2–710, R18–2–725, R18–2–727, R18–2–801, R18–2–802, R18–2–803, R18–2–804, and R18–2–805, amended on November 15, 1993.

* * * * *

[FR Doc. 03–6817 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA188–4204a; FRL–7465–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for PPG Industries, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for PPG Industries, Inc. (PPG). PPG is a major source of nitrogen oxides (NO_X) located in Greenwood Township, Crawford County, Pennsylvania. EPA is approving these revisions to establish NO_X RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on May 23, 2003, without further notice, unless EPA receives adverse written comment by April 23, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major volatile organic compound (VOC) and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of SIP Revision

On October 30, 2002, PADEP submitted a formal revision to its SIP to establish and impose case-by-case RACT for three major sources of VOC and NO_X. This rulemaking pertains to one of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements are included in the operating permit issued by PADEP. PPG is a facility that produces flat glass using float bath technology. PPG is located in Greenwood Township, Crawford

County, Pennsylvania, and is considered a major source of NO_X. In this instance, RACT has been established and imposed by PADEP in an operating permit. On October 30, 2002, PADEP submitted operating permit No. OP 20–145 to EPA as a SIP revision. This permit contains NO_X emission limits of 26.75 lbs. NO_X per ton per furnace of glass produced from two glass melting furnaces that are fueled by natural gas; No. 1 and No. 2. To show compliance with NO_X RACT emission limits, stack testing of No. 1 and No. 2 glass melting furnaces shall take place on an annual basis, to commence during the period from May 1 through October 31 (first test in 1995). Stack testing shall be performed in accordance with 25 Pa. Code Chapter 139 for NO_X emission testing of stationary sources. Operating conditions at the time of stack testing of No. 1 and No. 2 glass melting furnaces shall be set as standard operating conditions. If, after three consecutive annual tests, compliance with RACT emission limits is shown in a consistent manner, testing frequency may be altered as determined by PADEP. At least 30 days prior to stack testing, a pretest protocol shall be submitted to PADEP. The protocol shall include sampling port locations, specifications of test methods, procedures and equipment, and additional applicable information regarding planned testing protocol. In addition, at least two weeks prior to the test, PADEP shall be informed of the date and time of testing. Within 60 days after testing, two copies of the complete test report shall be submitted, including a furnace pull rate, oxygen concentrations in the upper regenerator chambers, a comparison of glass produced during the stack test versus the design product mix, and other parameters which may be monitored for NO_X emission optimization. Low excess air operations of No. 1 and No. 2 glass melting furnaces shall be implemented in accordance with 25 Pa. Code section 129.91. The permit also contains presumptive RACT requirements as defined in 25 Pa. Code section 129.93 and specified units shall be operated in such a manner as not to cause air pollution. The permit specifies: (1) Boilers Nos. 1, 2, and 3 shall comply with section 129.93 (b)(2–5); (2) Boiler No. 4 shall comply with section 129.93(c)(1); (3) Emergency Diesel Generators Nos. 1, and 2, Mill Use Water Emergency Pump, Emergency Fire Water Pump, City Water Emergency Pump, and the Boiler Room Emergency Generator shall comply with section 129(c)(5) and also shall not exceed 500 hours of operation on an annual basis, individually; and (4) Line 2 Lehr shall comply with section 129.93(c)(1).

The permit requires PPG to comply with 25 Pa. Code section 129.95 for recordkeeping requirements.

III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving a revision to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for PPG Industries, Inc. (OP 20–145) located in Crawford County, Pennsylvania. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 23, 2003, without further notice unless EPA receives adverse comment by April 23, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for PPG Industries, Inc.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Pennsylvania's source-specific RACT requirements to control NO_X emissions from PPG Industries, Inc., in Crawford County, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 5, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(201) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(201) Revisions pertaining to NO_X RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on October 30, 2002.

(i) Incorporation by reference.

(A) Letter of October 30, 2002 from the Pennsylvania Department of Environmental Protection transmitting source-specific NO_X RACT determinations.

(B) Operating permit (OP) for PPG Industries, Inc., Crawford County, OP 20–145, effective May 31, 1995.

(ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(201)(i)(B) of this section.

[FR Doc. 03–6816 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0378a; FRL–7460–5]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revision concerns the emission of volatile organic compounds (VOCs) from the transfer of gasoline to stationary storage tanks and motor vehicle fuel tanks. The SMAQMD and SJVUAPCD revisions concern the emission of VOCs from the transfer of gasoline to motor vehicle fuel tanks. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 23, 2003 without further notice, unless EPA receives adverse comments by April 23, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

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

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* This is not an EPA website and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
BAAQMD	8–7	Gasoline Dispensing Facilities	11/06/02	12/12/02
SMAQMD	449	Transfer of Gasoline into Vehicle Fuel Tanks	09/26/02	11/19/02
SJVUAPCD	4622	Gasoline Transfer into Motor Vehicle Fuel Tanks	09/19/02	11/19/02

On February 7, 2003, these submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We gave a limited approval/limited disapproval to a version of BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622 on July 25, 2001 (66 FR 38561).

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

The purposes of the submitted revisions are to correct deficiencies cited by limited approval/limited disapproval actions.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)) and must fulfill the special requirements for gasoline vapor recovery in ozone nonattainment areas (see section 182(b)(3)(A)).

The BAAQMD regulates a CAA subpart 1 ozone nonattainment area, the SMAQMD regulates a severe ozone nonattainment area, and the SJVUAPCD regulates a serious ozone nonattainment area. All rules must fulfill the requirements of RACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* ***Federal Register*** *Notice,* (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- EPA Draft *Model Rule, Gasoline Dispensing Facility-Stage II Vapor Recovery* (August 17, 1992).
- *Gasoline Vapor Recovery Guidelines,* EPA Region IX (April 24, 2000).
- *Model Volatile Organic Compound Rule for Reasonably Available Control Technology (RACT),* Office of Air Quality Planning and Standards (June 1992).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACT. All of the deficiencies identified in our previous limited approval and limited disapproval action on BAAQMD Rule 8–7 have been adequately addressed as follows:

- [Paragraphs 302.3 and 306 require maintaining equipment free of defects as defined in California Health and Safety Code 41960.2(c). California Code of Regulations (CCR), Title 17, section 94006 should be referenced instead, because it contains a list of the defects.] Section 306 provides the required references.
- [Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.] Section 301.13 requires testing for Vapor Tightness in the preceding 12 months in order to operate Phase I equipment. Section 302.14 requires testing for Dynamic Back Pressure in the preceding 12 months in order to operate a balance Phase II vapor recovery system. Section 302.15 requires testing for Air-to-Liquid Volume Ratio in the preceding 12 months in order to operate a vacuum assist Phase II vapor recovery system. We consider the 12-month interval to be reasonable for reverification of performance tests in the BAAQMD.

All of the deficiencies identified in our previous limited approval and limited disapproval action on SMAQMD Rule 449 have been adequately addressed as follows:

- [The rule should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an air-to-liquid volume ratio test and a liquid removal rate test.] Section 501 references the required performance tests.
- [Performance testing of vapor recovery equipment should start within 30 days of completion of construction of vapor recovery equipment.] Section 402.2 requires that any new or modified vapor recovery system take and pass all applicable performance tests within 30 days of completion of construction.
- [Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.] Section 402.3.a requires that reverification tests be performed within 30 days of the end of a 6-month period for over an average of 100,000 gallons per month throughput and within 30 days of the end of a 1-year period for less than an average of 100,000 gallons per month throughput. We consider the 6-month and 1-year intervals to be reasonable for reverification of performance tests in the SMAQMD. If In-Station Diagnostics are used, the test frequency may be every 2 years if approved by the APCO and allowed by the CARB Executive Order.
- [The rule should require that maintenance records, performance test records, reverification of performance test records, and gasoline throughput records (if an exemption is claimed) be kept with a retention period of at least two years.] Section 502.3 requires that

records be kept not less than 3 years, except that records for sources subject to Rule 207 must be kept for 5 years.

All of the deficiencies identified in our previous limited approval and limited disapproval action on SJVUAPCD Rule 4622 have been adequately addressed as follows:

• [Section 5.5.11 contains a reference to California Administrative Code, Title 17, section 94001, for the certification procedure that CARB uses for vapor recovery equipment. The correct reference is California Code of Regulations (CCR), Title 17, section 94011.] Section 5.5.11 is deleted, since the reference is not required.

• [Section 6.1 should require that maintenance records and reverification of performance test records be kept with a retention period of at least two years.] Sections 6.1.3, 6.1.4, and 6.1.5 require a records retention period of at least two years.

• [Section 6.2.2, which required that certified vapor recovery systems be tested with 60 days of installation or major modification, is deleted. This is less stringent than the SIP-approved rule. Performance testing of vapor recovery equipment should start within 30 days of completion of construction of vapor recovery equipment.] Section 6.2.1 requires that the Static Leak Test and the Dynamic Back Pressure Test be performed prior to or during the month designated as the expiration date in the Permit-to-Operate.

• [Section 6.3.1 should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an Air-to-Liquid Volume Ratio Test.] Section 6.3.1 lists the four common test methods to be used, including the Air-to-Liquid Volume Ratio Test.

• [Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.] Section 6.2.1 requires reverification of performance tests every 12 months for the Static Leak Test and Dynamic Back-Pressure Test and every 6 months for the Air-to-Liquid Volume Ratio Test. We consider the 6- or 12-month intervals to be reasonable for reverification tests in the SJVUAPCD. The Liquid Removal Rate Test must be performed whenever the amount of liquid in the vapor path exceeds 100 ml.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 23, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 23, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 13, 2003.

Alexis Straus,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(307) and (308) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(307) New and amended regulations for the following APCDs were submitted on November 19, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 449, adopted on February 5, 1975 and amended on September 26, 2002.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4622, adopted on May 21, 1992 and amended on September 19, 2002.

* * * * *

(308) New and amended regulations for the following APCDs were submitted on December 12, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 8–7, amended on November 6, 2002.

* * * * *

[FR Doc. 03–6810 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0378c; FRL–7460–6]

Interim Final Determination To Stay and/or Defer Sanctions, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on proposed approvals of revisions to the Bay Area Air Quality Management District (BAAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622.

DATES: This interim final determination is effective on March 24, 2003. However, comments will be accepted until April 23, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://*

www.arb.ca.gov/drdb/drdbltxt.htm. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

I. Background

On March 28, 2000, the State of California submitted a revision to Rule 8–7 in the BAAQMD portion of the SIP, which we disapproved in part on July 25, 2001 (66 FR 38561). On May 18, 1998, the State of California submitted a revision to Rule 449 in the SMAQMD portion of the SIP, which we disapproved in part on July 25, 2001 (66 FR 38561). On August 21, 1998, the State of California submitted a revision to Rule 4622 in the SJVUAPCD portion of the SIP, which we disapproved in part on July 25, 2001 (66 FR 38561). We based our disapprovals action on certain deficiencies in the submittals. This disapprovals action started sanctions clocks for imposition of offset sanctions 18 months after August 24, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On November 6, 2002, BAAQMD adopted revisions to Rule 8–7; on September 26, 2002, SMAQMD adopted revisions to Rule 449; and on September 19, 2002, SJVUAPCD adopted revisions to Rule 4622 that were intended to correct the deficiencies identified in our disapprovals action. On December 12, 2002, November 19, 2002, and November 19, 2002, respectively, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of these submittals because we believe they correct the deficiencies identified in our July 25, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 25, 2001 disapprovals.

EPA is providing the public with an opportunity to comment on this stay and/or deferral of sanctions. If comments are submitted that change our assessment described in this intermim final determination and the proposed approvals of revised BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, we intend to take subsequent final action to reimpose relevant sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

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

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittals and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittals. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

The administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

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

submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 24, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, Volatile organic compounds.

Dated: February 13, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–6812 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0386; FRL–7460–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on November 20, 2002, and concerns particulate matter (PM–10) emissions from emission units, electrical generation units, and fuel burning equipment. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

EPA is also finalizing a full approval of a revision to the ICAPCD portion of the California SIP concerning oxides of nitrogen (NO_X) emissions from fuel burning equipment.

DATES: This rule is effective on April 23, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

I. Proposed Action

On November 20, 2002 (67 FR 70032), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Revised	Submitted
ICAPCD	403	General Limitations on the Discharge of Air Contaminants	07/24/01	10/30/01

On January 18, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the CAA. These provisions include the following:

- Rule 403 should have monitoring and recordkeeping requirements in order to assure compliance with PM emission standards.
- Rule 403 should have some limitation on the period or conditions allowed for the exemption from PM emission standards during start-up and load changes.

On November 20, 2002 (67 FR 70032), EPA proposed a full approval of the following rule that was submitted for incorporation into the California SIP.

TABLE 2.—SUBMITTED RULE

Local agency	Rule #	Rule title	Revised	Submitted
ICAPCD	400	Fuel Burning Equipment—Oxides of Nitrogen	09/14/99	05/26/00

On October 6, 2000, this rule submittal was found to meet the completeness criteria.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittals.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of submitted ICAPCD rule 403. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA according to 40 CFR 52.31. In addition, EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the ICAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is also finalizing a full approval of submitted ICAPCD rule 400.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. 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.

Thus, Executive Order 13175 does not apply to this rule.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

G. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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). This rule will be effective April 23, 2003.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 6, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(279)(i)(*A*)(11) and (288)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*11*) Rule 400, revised on September 14, 1999.

* * * * *

(288) * * *

(i) * * *

(D) * * *

(*2*) Rule 403, adopted on November 19, 1985 and revised on July 24, 2001.

* * * * *

[FR Doc. 03–6809 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Regional Docket Nos. II–2001–02, –06, –07; FRL–7472–1]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Consolidated Edison Company's 74th Street Station; the Danskammer Generating Station; and the Lovett Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to three State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to three citizen petitions asking EPA to object to operating permits issued to three facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities: Consolidated Edison's 74th Street Station in New York, NY; Dynegy Northeast Generation's Danskammer Generating Station in Newburgh, NY; and Mirant New York's Lovett Generating Station in Tomkins Cove, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for the Con Edison 74th Street Station, the Danskammer Generating Station, and the Lovett

Generating Station are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Con Edison's 74th Street Station

On May 14, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Consolidated Edison 74th Street Station. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) The permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate monitoring and are not practically enforceable; (2) DEC violated the public participation requirements of 40 CFR 70.7(h) by inappropriately denying NYPIRG's request for a public hearing; (3) the permit is based on an incomplete permit application in violation of 40 CFR 70.5(c); (4) the permit is accompanied by an insufficient statement of basis as required by 40 CFR 70.7(a)(5); (5) the permit distorts the annual compliance certification requirement of Clean Air Act section 114(a)(3) and 40 CFR 70.6(c)(5); (6) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions; and (7) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B).

On February 19, 2003, the Administrator issued an order partially granting and partially denying the petition on the Con Edison 74th Street Station. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Include annual tune-ups and necessary parametric monitoring to ensure the turbines' compliance with their NO_X RACT emission limits; (2) revise recordkeeping provisions to require that records relating to sulfur monitoring be kept for five years; (3) include appropriate conditions for particulate matter monitoring that meets the requirements of § 70.6(a)(3)(i)(B); (4) include record keeping and reporting requirements with regard to the use of architectural coatings and sealers; (5) note the existence and applicability of the Episodic Action Plan; and (6) incorporate ''Appendix A'' of the opacity consent order. The order also explains the reasons for denying NYPIRG's remaining claims.

NYPIRG raises each of the above seven issues, except for the public hearing issue, in the petitions for the Danskammer Generating Station and the Lovett Generating Station, as well. In the Danskammer Generating Station petition, NYPIRG raises five additional issues: (1) The permit lacks federally enforceable conditions that govern the procedures for permit renewal; (2) the permit fails to include federally enforceable emission limits established under pre-existing permits; (3) the permit does not properly include CAA section 112(r) requirements; (4) the permit improperly describes the annual compliance certification due date; and (5) the permit does not assure Danskammer's compliance with applicable sulfur dioxide (SO_2) emission limitations. In the petition on the Lovett Generating Station, NYPIRG raises three additional issues: (1) The proposed permit lacks a compliance schedule designed to bring the Lovett Generating Station into compliance with PSD requirements; (2) the proposed permit fails to include federally enforceable emission limits established under pre-existing permits; and (3) the proposed permit does not correctly include the CAA section 112(r) requirements. In each of these petitions, the issue on monitoring is subdivided into several detailed points, some of which are permit-specific and some of which are shared among the other permits.

II. Danskammer Generating Station

On December 10, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Danskammer Generating Station, on the grounds listed above. On February 14, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Specify normal operating ranges for ESP parameters and (2) delete language allowing digital recording of COM data to be replaced by manual recording. The order also explains the reasons for denying NYPIRG's remaining claims.

III. Lovett Generating Station

On November 26, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Lovett Generating Station, on the grounds listed above. On February 19, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Incorporate opacity monitoring to assure compliance with New York State regulations at 6 NYCRR section 211.3; and (2) incorporate all necessary requirements from the opacity consent order. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: March 6, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–7049 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–7472–2]

RIN–2040–AD85

Withdrawal of Direct Final Rule; National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for ''National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water

Intake Structures for New Facilities; Direct Final Rule.'' We published the direct final rule on December 26, 2002 (67 FR 78948), to make three minor technical corrections to the final regulations implementing section 316(b) of the Clean Water Act for new facilities. We stated in the direct final rule that if we received adverse comment by January 27, 2003, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on December 26, 2002 (67 FR 78956). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of March 24, 2003, EPA withdraws the direct final rule published at 67 FR 78948, on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Martha Segall, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC, 20460 (phone: 202–566–1041; email: *segall.martha@epa.gov*).

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on December 26, 2002, to make minor changes to a final rule published December 18, 2001, implementing section 316(b) of the Clean Water Act (CWA). The December 2001 final rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities using water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling. The national requirements established the best technology available for minimizing adverse environmental impact associated with the use of these structures. The direct final rule clarified three technical issues on velocity monitoring, authority to require additional design and construction technologies, and procedures governing requests for less stringent alternative requirements.

EPA published a companion proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. The proposed rule stated that if EPA received adverse comment by January 27, 2003, the direct final rule would not take effect and EPA would publish a notice in the **Federal Register** withdrawing the direct final rule before the March 26, 2003, effective date. The EPA subsequently received adverse comment on the direct final rule. EPA plans to address those comments in a subsequent action. Today's action withdraws the direct final rule; the amendments to the final regulations addressing cooling water intake structures for new facilities will not take effect on March 26, 2003.

List of Subjects in 40 CFR Part 125

Environmental protection, Cooling water intake structures, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: March 19, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–7047 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0278; FRL–7299–4]

Pesticides; Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contact Surface Sanitizing Solutions); Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: EPA received adverse comment on the direct final rule ''Pesticides; Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contact Surface Sanitizing Solutions),'' published in the **Federal Register** of December 3, 2002, because of the adverse comment EPA is withdrawing the direct final rule. The direct final rule was intended to add a new section to part 180 listing the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions.

DATES: The withdrawal is effective March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a food manufacturer, or antimicrobial pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Industry (NAICS 311), *e.g.,* Food manufacturing.
- Producers (NAICS 32561), *e.g.,* Antimicrobial pesticides.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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–2003–0278. 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. 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. Once in the system, select ''search,'' then key in the appropriate docket ID number.

III. What Action is the Agency Taking?

EPA has received adverse comment on the direct final rule published in the **Federal Register** of December 3, 2002 (67 FR 71847) (FRL–6824–2). EPA stated in that direct final rule that if EPA received adverse comment by February 3, 2003, the direct final rule would be withdrawn and not take effect. The direct final rule being withdrawn contains a list of exempt chemicals duplicated from the Food and Drug Administration's (FDA) regulations in 21 CFR 178.1010.

The Agency will continue to pursue this rulemaking effort by publishing a notice of proposed rulemaking in a future edition of the **Federal Register**. The comments on the direct final rule will be addressed in that future notice of proposed rulemaking.

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practices and procedures, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 17, 2003.

Debra Edwards,

Acting Director, Registration Division.

[FR Doc. 03–6946 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–744, MM Docket No. 01–44, RM–10022]

Digital Television Broadcast Service; Derby, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pappas Telecasting of America, allots DTV channel 46 to Derby, Kansas. *See* 66 FR 12753, February 28, 2001. DTV channel 46 can be allotted to Derby, Kansas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 37–54–12 N. and 97–37–06 W. with a power of 1000, HAAT of 246 meters. With this action, this proceeding is terminated.

DATES: Effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–44, adopted March 11, 2003, and released March 20, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating 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 *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Kansas, is amended by adding Derby, DTV channel 46.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–6876 Filed 3–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–745, MB Docket No. 02–282, RM–10523]

Digital Television Broadcast Service; Minot, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Prairie Public Broadcasting, substitutes DTV channel *40 for DTV channel *57 at Minot, North Dakota. *See* 17 FCC Rcd 18093 (2002). DTV channel *40 can be allotted to Minot, North Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 48–03–02 N. and 101–23–25 W. with a power of 1000, HAAT of 253 meters and with a DTV service population of 85 thousand. Since the community of Minot is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–282, adopted March 11, 2003, and released March 20, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating 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 *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Dakota, is amended by removing DTV channel *57 and adding DTV channel *40 at Minot.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–6875 Filed 3–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

50 CFR Part 300

National Oceanic and Atmospheric Administration

[Docket No. 030124019–3040–02; I.D. 010703B]

RIN 0648–AQ67

Pacific Halibut Fisheries; Catch Sharing Plan; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on March 7, 2003, for the Pacific halibutfisheries catch sharing plan.

DATES: Effective March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or Jamie Goen, 206–526–6140.

SUPPLEMENTARY INFORMATION: The final rule was published in the **Federal Register** on March 7, 2003 (68 FR 10989). The Catch Limits table that was published under Section 11 contained errors that require correction. The table is corrected to reflect the addition of zeros that were inadvertently deleted from the published document.

This document corrects the errors and republishes the table.

Corrections

In the rule FR Doc. 03–5171, in the issue of Thursday, March 7, 2003 (68 FR 10989) on page 10994, under 11. Catch Limits, the table in column 3 is corrected to read as follows:

Regulatory Area	Catch Limit	
	Pounds	Metric tons
2A: directed commercial, and incidental commercial during salmon troll fishery	262,000	118.8
2A: incidental commercial during sablefish fishery	70,000	31.7
2B	11,750,000	5,328.8
2C	8,500,000	3,854.9
3A	22,630,000	10,263.0
3B	17,130,000	7,768.7
4A	4,970,000	2,254.0
4B	4,180,000	1,895.7
4C	2,030,000	920.6
4D	2,030,000	920.6
4E	390,000	176.9

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

Dated: March 18, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–6956 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 082902A]

Atlantic Highly Migratory Species; Swordfish Quota Adjustment

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

ACTION: Adjustment of annual catch quotas.

SUMMARY: NMFS adjusts the 2002 fishing year directed fishery, incidental catch, and reserve category quotas for North Atlantic swordfish to account for underharvests from the 2000 and 2001 fishing years. The 2002 South Atlantic swordfish quota remains at 289.0 metric tons (mt) dressed weight (dw). This action is consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP) and the provisions for swordfish quota adjustments.

DATES: Effective March 24, 2003, through May 31, 2003.

FOR FURTHER INFORMATION CONTACT: Tyson Kade at 301–713–2347; Fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 635 establish catch quotas and, as applicable, fishing category and seasonal subquotas, for the North and South Atlantic swordfish stocks. Under the FMP, these catch quotas are required to be consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Additionally, the implementing regulations (50 CFR 635.27(c)(3)) require that, if total landings are above or below the applicable Atlantic swordfish quotas, the difference must be subtracted from, or added to, the following year's quota for the specific management category, provided such quota adjustments are consistent with ICCAT recommendations. Further, any carryover adjustments to the annual North Atlantic swordfish directed fishery quota must be apportioned equally between the two semiannual periods. Landings reports, submitted to the Southeast Fisheries Science Center, for the directed fisheries for North and South Atlantic swordfish, and estimates of the incidental catch of North Atlantic swordfish, indicate that the allocations for the respective fisheries were not completely harvested during the 2000 (June 1, 2000 through May 31, 2001) and 2001 (June 1, 2001 through May 31, 2002) fishing years.

North Atlantic Swordfish

The 2000 fishing year landings quota was 2,219.0 metric tons (mt) dressed weight (dw). Directed and incidental fishery landings of North Atlantic swordfish during the 2000 fishing year were reported to be 2,017.9 mt dw, leaving 201.1 mt dw available for carryover to the subsequent fishing year. In addition to the landings quota, the International Commission for the Conservation of Atlantic Tunas (ICCAT) allocated to the United States a dead discard allowance. In the 2000 fishing year, the dead discard allowance was 240.0 mt dw and the United States discarded an estimated 322.0 mt dw of dead swordfish. The 82.0 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. Therefore, a net total of 119.1 mt dw of unharvested swordfish quota may be carried over from the 2000 fishing year.

On September 5, 2001, NMFS published notification in the **Federal Register** of an adjustment to the 2001 fishing year quota level from 2333.2 mt dw to 2,883 mt dw to account for the underharvest in the 1999 fishing year (66 FR 46401). The 2001 adjusted quota referenced in that **Federal Register**

notice was incorrect. The correct adjusted quota level for the 2001 fishing year was 2,768.8 mt dw.

In order to comply with a recommendation made at the 2000 meeting of ICCAT, NMFS agreed to transfer up to 400 mt whole weight (ww) (300.8 mt dw) of unharvested U.S. swordfish quota in 2001 to Japan to account for excess dead discards of North Atlantic swordfish from Japanese vessels. However, the transfer would only apply to dead discards from a defined area. At the 2002 meeting, Japan indicated that a total of 215 mt ww (161.7 mt dw) of swordfish were discarded dead from the defined area. NMFS must therefore deduct 161.7 mt dw from the reserve quota category which was established in the November 20, 2002, rulemaking (67 FR 70023). Following the quota transfer to Japan, the reserve category has 139.1 mt dw remaining in the 2002 fishing year.

In the 2001 fishing year, the directed and incidental fishery landings of North Atlantic swordfish were reported to be 1,581.7 mt dw. The estimated amount of dead discards for the 2001 fishing year has not been determined yet and will be assessed later. Any excess dead discards will be deducted from the 2003 landings allowance. The underharvest for the 2001 fishing year, after accounting for the transfer from the reserve category, is 1,025.4 mt dw, which may be added to the underharvest from the 2000 fishing year for a total of 1,144.5 mt dw available for carry over to the 2002 fishing year as required by 50 CFR 635.27(c)(3).

South Atlantic Swordfish

Directed fishery landings of South Atlantic swordfish during the 2000 and 2001 fishing years were reported to be 93.8 mt dw and 69.8 mt dw, respectively. The quota for the 2000 and 2001 fishing years was 289.0 mt dw. Consequently, 195.2 mt dw and 219.2 mt dw were unharvested at the end of these fishing years. ICCAT recommended that the U.S. underharvest from 2000 may be carried over to 2003 in addition to the quotas specified for that year. Underharvests from 2001 and 2002 are ineligible for carryover because individual country quota levels in those years were not agreed by ICCAT, but established autonomously. Therefore, the 2002 U.S. quota for South Atlantic swordfish remains at the current level of 289.0 mt dw and 195.2 mt dw will be applied to 2003 in a separate action. There is no incidental catch quota for South Atlantic swordfish.

Classification

This action is taken under 50 CFR 635.27(c)(3)(ii) and (c)(3)(iii) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 18, 2003.

Richard W. Surdi,

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

[FR Doc. 03–6957 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 031703E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 20, 2003, through 1200 hrs, A.l.t., September 1, 2003.

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

SUPPLEMENTARY INFORMATION:

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

The A season allocation of the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 927 metric tons (mt) as established by the final 2003 harvest specifications of groundfish for the GOA (68 FR 9924, March 3, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allocation of the 2003 TAC of Pacific cod apportioned to vessels to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 877 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the A season allocation of the 2003 TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

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

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

Dated: March 19, 2003.

Richard W. Surdi,

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

[FR Doc. 03–6952 Filed 3–19–03; 4:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 56
Monday, March 24, 2003

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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 117 and 165

[CGD09–03–204]

[RIN 1625–AA09; 1625–AA00]

Temporary Regulations, Saginaw River, August 14–18, 2003

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish proposed temporary safety zones and drawbridge suspension regulations during the Bay City Tall Ship Celebration to be held August 14–18, 2003 located on the Saginaw River in Bay City, Michigan. These safety zones are necessary to promote the safe navigation of vessels and the safety of life and property during the periods of heavy vessel traffic expected during these events. These safety zones are intended to restrict vessel traffic from a portion of Saginaw Bay and the Saginaw River.

DATES: Comments and related material must reach the Coast Guard on or before April 30, 2003.

ADDRESSES: You may mail or hand-deliver comments and related material to: Commanding Officer, U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave, Detroit MI 48207–4380. Marine Safety Office Detroit maintains the public docket for this rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection and copying at the Coast Guard Marine Safety Office between the hours of 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, Marine Safety Office Detroit, at (313) 568–9580.

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 (CGD09–03–204), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8 ½″ × 11″ unbound paper in a format suitable for copying. Persons requesting acknowledgement of receipt of comments should include 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Detroit 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

Bay City Tall Ship Celebration 2003 is a community-wide maritime festival in Bay City, MI, featuring a 12-mile ship parade, fireworks, and in-port viewing and tours of moored historic tall ship vessels between August 14 and August 18, 2003. The parade of ships is the start of the Bay City Celebration. The parade will form in Saginaw Bay and traverse the Saginaw River to the Liberty Bridge and the Friendship Pier.

Vessels will moor at docks along Veterans Park and Wenonah Park between the Liberty Bridge and the Friendship Pier in Bay City. We are proposing to establish a temporary moving safety zone around the parade vessels during the parade to ensure the safety of passengers, crew and visitors. A second proposed temporary safety zone would be established, once the vessels are moored, between the Liberty Bridge and the Friendship Pier (by light buoy 28) mile marker six. Fireworks are scheduled to take place in Veterans Park on August 16, 2003 from 9:30 p.m. to 11 p.m. We believe the proposed temporary safety zone, which would already be in place for the moored vessels, would be sufficient to protect waterside viewers during the event.

These temporary regulations are prompted by the high degree of control necessary to ensure the safety of both participating and spectator vessels during the events occurring in Saginaw Bay and the Saginaw River. These proposed regulations provide guidance on vessel movement controls and proposed safety zones that will be in effect at specified marine locations during specified times. The temporary regulations are specifically designed to minimize adverse impacts on commercial users of the affected waterways.

Discussion of Proposed Rule

The events planned for The Bay City Tall Ships Celebration for the period August 14–18, 2003 are as follows:

(1) *Parade of Ships, August 14, 2003.* Bay City Tall Ship Celebration 2003 will hold its tall ship parade on August 14, 2003. The parade is expected to begin at 2 p.m. in Saginaw Bay. To accommodate the start time, tall ships shall begin mustering at approximately 1 p.m. in Saginaw Bay, near the starting point at position 43°43′54″ N, 83°46′54″ W (northeast of Saginaw Bay Channel Light ''12'' (LLNR 10675)).

The parade route starts abeam of Saginaw Bay Channel Light ''12'' and proceeds up the Saginaw Bay Channel into the Saginaw River. It continues up the Saginaw River to a point near the Veterans Memorial Park and Wenonah Park located between the Liberty Bridge and the Friendship Pier, where the parade will end and the parade vessels will moor.

To ensure the safety of the public during the parade, shoreside public safety vehicles must be fully capable of crossing the Saginaw River. To accommodate this public safety need, the Independence Bridge and the Liberty Bridge will open for vessel traffic on a rotating basis. Thus, both bridges will not be open at the same time.

The Independence Bridge will open for the passage of two to three parade vessels and then close. The vessels will then proceed up the river to the Liberty Bridge, which will open to allow passage. After the Liberty Bridge has closed, the Independence Bridge will open to allow two or three more parade

vessels to pass. Once the Independence Bridge is closed, the Liberty Bridge will open, allowing those vessels to pass. Vessels will continue to transit through the Independence and Liberty Bridges in this manner until all parade vessels have safely passed.

The parade will end near Veterans Memorial Park and Wenonah Park in Bay City, Michigan. Vessels will moor along the waterfront between the Liberty Bridge and the Friendship Pier.

The Coast Guard proposes to establish a temporary moving safety zone around the participating vessels for the duration of the parade. The proposed moving safety zone will be enforced when the parade starts at 43°43′54″ N, 83°46′54″ W (Saginaw Bay Channel Light ''12'' (LLNR 10675)), and will remain in effect until all parade vessels are moored. For the lead parade vessel, the safety zone would consist of one mile ahead and 100 yards in all other directions. For all other vessels, the moving safety zone would consist of 100 yards in any direction. The proposed temporary moving safety zone will be enforced from 1 p.m. on August 14, 2003 and remain in effect until the last official parade vessel is safely moored (roughly 9 p.m.) on August 14, 2003; or unless terminated sooner by the Captain of the Port Detroit (COTP).

Only parade vessels and official patrol craft will be permitted in the proposed moving safety zone during the ship parade. Any other vessel desiring to transit this zone, prior to transiting, must request permission from the COTP Detroit, or his designated on scene representative which will be the Patrol Commander.

Spectator vessels are requested to anchor in the waters of the Saginaw River outside of the proposed moving safety zone. The Captain of the Port Detroit asks that all spectator craft in the Saginaw River remain at anchor during the parade. For your own safety, it is recommended that spectator vessels be at anchor no later than 1 p.m. on August 14, 2003. The Coast Guard asks that they remain at anchor until the transit of the final parade vessel.

Mariners are cautioned that the areas designated for spectator craft anchoring have not been subject to any special survey or inspection and that charts may not show all riverbed obstructions or the shallowest depths. They are not special anchorage areas. Spectator vessels choosing waterside locations along the parade route must display anchor lights or shapes, as required by the navigation rules. Vessels anchoring in the Saginaw River, outside the channel, are requested to proceed at speeds that will create minimal wake and not to exceed five (5) miles per hour.

Vessel operators intending to anchor along the parade route during the Tall Ship Celebration are advised to fully anticipate their length of stay and to the greatest extent practicable, comply with the recommended operational guidelines. Operators should not leave unattended vessels in the river along the parade route at any time and should not nest or tie off to other vessels, buoys, or to the adjacent shoreline.

Due to the number of spectator craft expected, vessel operators should remember it would be virtually impossible to move safely to new positions, as maneuvering between anchored vessels is not advisable. Accordingly, vessels should have sufficient facilities on board to retain all garbage and untreated sewage. Discharge of either in any waters of the United States, which include all waters addressed in this rule, is strictly forbidden. Violators may be assessed a civil penalty of up to $25,000.

(2) *Mooring of Tall Ships, August 14–18, 2003.* After the arrival of the tall ships after the parade, a temporary proposed safety zone will be established in all waters of the Saginaw River between the Liberty Bridge and the Friendship Pier within 50 feet of any official parade vessel. This proposed safety zone will be in effect until the tall ships depart Bay City. Vessels may be permitted to operate in this proposed safety zone, but only after permission by the COTP Detroit's on scene representative, which will be the Patrol Commander. Spectator vessels will be directed out of this area altogether during the fireworks event, scheduled to take place between 9:30 p.m. and 11 p.m. on Saturday, August 16, 2003.

These safety rules are necessary in order to provide adequate controls to ensure the safety of the tall ships, their crews, and shore side visitors who may be boarding these vessels while they are moored.

If changes are made to these proposed rules, or if the Captain of the Port Detroit determines additional controls are necessary, a notice will be published in the **Federal Register**. Details of these events and of the special regulations in effect for each event will also be published in the Local Notice to Mariners. Additionally, appropriate Safety Marine Information Broadcasts will be initiated for each event. For all events, vessel operators will be required to maneuver as directed by on-scene Coast Guard patrol personnel. Coast Guard patrol personnel enforcing regulations for safety zones, anchorages, and regulated areas for these events include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local law enforcement vessels. Violators of Coast Guard proposed safety zone regulations may result in civil penalties of up to $25,000.

With the many sailing vessels and spectator craft arriving in Bay City for this event, additional restrictions on vessel movements may be imposed in the form of security zones or other emergency measures to safeguard specific individual vessels. In all cases, further restrictions on vessel movements will be held to the minimum necessary to ensure vessel and personal safety. Every attempt will be made to inform the public regarding any additional restrictions COTP Detroit may feel necessary to impose. If possible, details of these restrictions will be published in the final rule for this event. Otherwise, they will appear separately as final rules in emergency rulemaking.

Regulatory Evaluation

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

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

The proposed temporary moving safety zone will only be during a six hour time period on August 14, 2003. The additional proposed safety zone will be enforced after the mooring of the Parade Vessels. On August 14, 2003, the combination of parade vessels and large numbers of recreational vessels will cause potential disruptions to normal port activity. However, due to the temporary nature of these disruptions, they can be planned for in advance to minimize the economic hardship that might result. The largest segments of the port community facing disruptions are the operators of deep draft vessels and the terminals they call on. In addition to the extended advance notice of these events provided by the COTP, deep draft vessel traffic will be accommodated as best as possible on these two days.

The Coast Guard expects that the amount of publication and advertisement about these events and about these proposed regulations will allow the industry sufficient time to

adjust schedules and minimize adverse impacts. Weighted against and counterbalanced with adverse impacts are the favorable economic impacts that these events will have on commercial activity in the area as a whole from the boaters and tourists these events are expected to attract.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), an initial review was conducted to determine 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.

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. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of a safety zone. However, we believe this would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a few hours on the day of the event on an annual basis. Vessel traffic can safely pass outside the proposed safety zone during the events, and, with the permission of the COTP or his on scene representative, which will be the Patrol Commander, traffic would be allowed to pass through the safety.

The exact times and dates will be published in the Ninth Coast Guard District Local Notice to Mariners, broadcasts made via the Broadcast Notice to Mariners and facsimile sent to operators of vessels who might be in the affected area who request such. 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 (*see* **ADDRESSES**) explaining 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. 104–221), 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 this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

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

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 proposed 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 proposed rule would not result in such an 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 E.O. 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 does not concern an environmental risk to health or risk to safety that may 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.

Energy Effects

We have analyzed this proposed 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 considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34 (f, g, and h) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 117

Bridges.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 117 and 165 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. until 1 p.m., Thursday, August 14, 2003, in § 117.647, suspend paragraph (b) and add temporary paragraphs (e) and (f) to read as follows:

§ 117.647 Saginaw River.

* * * * *

(e) The draws of the Veterans Memorial bridge, mile 5.60, and Lafayette Street bridge, mile 6.78 in Bay City, shall open on signal from March 16 through December 15, except as follows:

(1) From 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. except Saturdays, Sundays, and holidays observed in the locality, the draws need not be opened for the passage of vessels of less than 50 gross tons.

(2) From 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. except on Sundays and Federal holidays, the draws need not be opened for the passage of down-bound vessels of over 50 gross tons.

(3) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Independence and Veterans Memorial bridges need not be opened for the passage of pleasure craft except from three minutes before to three minutes after the hour and half-hour.

(4) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Liberty Street and Lafayette Street bridges need not be opened for the passage of pleasure craft, except from three minutes before to three minutes after the quarter hour and three-quarter hour.

(f) The draws of the Independence bridge, mile 3.88, and the Liberty Street Bridge, mile 4.99, from 1 p.m. until 9 p.m., Thursday, August 14, 2003, shall be closed to navigation, except that the draws shall open upon signal for official vessels participating in the Tall Ship Celebration 2003 Parade of Ships.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. 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.

4. Add temporary § 165.T09–204 to read as follows:

§ 165.T09–204 Safety Zone; Tall Ship Celebration 2003 Bay City, MI.

(a) *Safety zones.* The following are safety zones:

(1) *Saginaw River Moored Tall Ships Safety Zone, Veterans Park and Wenonah Park, Saginaw River, Bay City, MI*

(i) *Location.* The following area is a safety zone: All waters of the Saginaw River between the Liberty Bridge at mile 4.99 and the Friendship Pier at mile 6.1 within 50 ft of any participating moored Tall Ships.

(ii) *Enforcement periods.* The safety zones in paragraph (a)(1) of this section will be enforced whenever a tall ship is moored at Veterans Park or Wenonah Park between the Liberty Bridge and the Friendship Pier, from 1 p.m. on August 14, 2003 to 9 p.m. on August 18, 2003.

(iii) *Special Regulations.*

(A) Vessels operating in the Saginaw River within the safety zone during the effective period must proceed at no wake speeds, and not within 50 feet of the hull of any moored tall ship, in traffic patterns as directed by on-scene Coast Guard patrol craft, so as not to hazard tall ships or shoreside visitors boarding tall ships.

(B) Vessels shall remain outside the designated hazard area in the safety zone, as directed by on-scene Coast Guard personnel, during any evening fireworks event.

(2) *Bay City Tall Ships Parade Moving Safety Zone.*

(i) *Location.* The following area is a moving safety zone: all waters of the Saginaw Bay and Saginaw River one mile ahead and 100 yard in every other direction of the lead official parade vessel; for all other official parade vessels, 100 yards in any direction from when the vessels pass the starting position at 43°43′54″ N, 83°46′54″ W (northeast of Saginaw Bay Light ''12'' (LLNR 10675)), and remaining in effect until the official parade vessels are moored between Veterans Memorial Park and Wennonah Park (between the Liberty Bridge and the Friendship Pier).

(ii) *Enforcement period.* Paragraph (a)(2) of this section will be enforced from 1 p.m. on Thursday, August 14, 2003 until 9 p.m. on Thursday, August 14, 2003, until each participating Tall Ship is safely moored in Bay City.

(b) *Regulations.*

(1) The general regulations in 33 CFR 165.23 apply to the zones in this section.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

Dated: March 5, 2003.

Ronald F. Silva,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–6917 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA188–4204b; FRL–7465–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for PPG Industries, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing reasonably available control technology (RACT) determinations for PPG Industries, Inc. (PPG). PPG is a major source of nitrogen oxides (NO_X) located in Crawford County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 23, 2003.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and

Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Pennsylvania's Approval of NO_X RACT Determinations for PPG Industries, Inc., that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: March 5, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–6815 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0378b; FRL–7460–7]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). The ICAPCD revision concerns the emission of particulate matter (PM–10) from agricultural burning. The MBUAPCD revision concerns the emission of PM–10 from incinerator burning. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 23, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

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

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 13, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–6811 Filed 3–21–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 56
Monday, March 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Easy Fire Recovery Project, Malheur National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to assist the recovery of the area that burned in the Easy Fire in the Summer of 2002. The proposal is to salvage fire-killed and fire-damaged timber, implement re-forestation in the project area, and implement projects to reduce the potential for future damage to wildlife habitat and aquatic resources as a result of the Easy Fire. The 5,839 acre project area is located on the Prairie City Ranger District and is centered approximately 11 miles east of Prairie City, Oregon, with the Upper Middle Fork John Day River and Upper John Day River Watersheds. The agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by April 30, 2003.

ADDRESSES: Send written comments to Ryan Falk, Acting District Ranger, Prairie City Ranger District, 327 Front Street, Prairie City, Oregon 97869.

FOR FURTHER INFORMATION CONTACT: Eric Ornberg, Easy Fire Recovery Project Team Leader, Middle Fork Ranger District, Williamette National Forest; Phone: 541–782–5217. Email *eornberg@fs.fed.us* or use the Malheur National Forest Web site at *http://www.fs.fed.us/r6/malheur.*

SUPPLEMENTARY INFORMATION: In July and August 2002, the Easy Fire burned approximately 5,839 acres on the Malheur National Forest. The decision area for the Easy Fire Recovery Project is located in the Upper Middle Fork John Day River watershed and the Upper John Day River Watershed. The project area is entirely within National Forest System lands.

Purpose and Need for Action. The purposes and need for actions ''here'' within the Easy Fire Recovery Project area and ''now'' are:

- Capture the economic value of the dead and dying trees that are in excess to other resource needs;
- Reduce the fuels levels of dead standing and down;
- Improve resiliency of forest vegetation to insect and disease outbreaks, and restore ecologically appropriate forest structure in the surviving stands;
- Replant and restore forest vegetation for the benefit of wildlife, fish, and timber products;
- Replace Dedicated and Replacement Old Growth areas that burned and are not longer suitable;
- Reduce road and skid trail impacts to meet Forest Plan standards for wildlife, fisheries, and water quality; and
- Provide safe access for administrative, recreational, and fire recovery activities.

Proposed Action. The following actions are proposed to respond to the purpose and need for action: approximately 3,200 acres, in areas of moderate and high burned severity, would be salvaged (including dead, dying, and green trees) and replanted; approximately 400 acres of lower severity burned forest would be salvaged and replanted to improve stand resiliency to insects and disease outbreak; approximately 160 acres of fire-killed or damaged post and pole-sized stands will be salvaged; designate new Dedicated and Replacement Old Growth areas to replace areas now unsuitable due to fire damage; and hazard trees would be removed along system roads. About 50 percent of the proposed timber salvage units would be harvested using ground-based logging systems, 10 percent would be harvested using skyline logging systems, and 40 percent would be harvested by helicopter. No new system road construction is proposed for the salvage harvest. Construction of approximately 0.6 miles of temporary roads and approximately 69 miles of road maintenance would be required for timber salvage. The temporary roads would be decommissioned after project activities. Connected actions in association with salvage include water barring and erosion control measures such as scattering of slash on skid trails and treatment of slash.

Approximately 3,760 acres would be planted following salvage and site preparation. Snag retention levels would meet Forest Plan standards. Fuels would be reduced to within the range of historic variability throughout the project area. A variety of fuel treatment methods would be used (salvage, burning in place, piling and burning, and whole-tree yarding). Selection of new Dedicated and Replacement Old Growth areas would require a non-significant amendment to the Forest Plan.

Alternatives. A full range of alternatives will be considered, including a ''no-action'' alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scoping, the action alternatives would differ in: the silvicultural and post-harvest treatments prescribed; the amount and location of harvest; or the amount and location of fuels reduction activity. Other management activities which will be used to develop other alternatives may include: avoid salvage harvest on the steeper slopes above Clear Creek and Easy Creek to reduce sediment delivery to these streams (which are habitat or tributary to habitat for threatened fish species); consider various regeneration strategies (*i.e.* low stocking levels); and consider current science on snag and coarse woody debris dependent species habitat (this could result in site-specific Forest Plan amendment to update standards and guidelines).

Scoping. The scoping process will include: identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues or those previously covered by a relevant environmental analysis, and identifying potential environmental effects of this proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions). The public will have the opportunity to participate at several points during the analysis process. The

public will be kept informed of the EIS process through the quarterly publication of the ''Malheur National Forest's Schedule of Proposed Actions'' and letters to agencies, organizations, and individuals who have previously indicated their interest in similar activities.

Issues. Preliminary issues include effects of proposed actions on: Water quality and fish habitat for resident and anadromous threatened species; snags and downed wood habitat; noxious weeds; late and old growth structure; Armillaria root rot; restoration of historic vegetation composition, structure, and pattern; potential loss of commercial timber value; and economic viability of timber salvage.

Comments. Public comments about this proposal are requested in order to assist in properly scoping issues, determining how to best manage the resources, and fully analyzing environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 214 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and made available for public review by July 2003. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available in October 2003. Implementation is expected to occur in 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service is the lead agency. The Responsible Official is the Forest Supervisor, Malheur National Forest. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The Responsible Official may also decide on site-specific Forest Plan amendments regarding standards and guidelines for snag and coarse woody debris, as well as big game habitat, if warranted by the analysis of those components in light of recent science. The Responsible Official will document the Easy Fire Recovery Project decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: March 13, 2003.

Roger Willians,

Forest Supervisor.

[FR Doc. 03–6900 Filed 3–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Monument Fire Recovery Project, Malheur National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal to assist the recovery of the area burned in 2002 by the Monument Fire. The EIS will include proposals to harvest fire-killed and fire-damaged trees, implement reforestation, and implement projects to alleviate the potential for future damage to riparian and aquatic resources. The 8,600-acre project area is located on the Prairie City Ranger District and is centered approximately 23 miles southeast of Prairie City, Oregon, within the Little Malheur and North Fork Malheur Watersheds. The agency gives notice of the full environmental analysis and decision making process that will occur on the proposal, so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by April 30, 2003.

ADDRESSES: Send written comments to Ryan Falk, Acting District Ranger, Prairie City Ranger District, PO Box 337, Prairie City, Oregon 97869.

FOR FURTHER INFORMATION CONTACT: Rick Larson, Monument Fire Recovery Project Interdisciplinary Team Leader, Prairie City Ranger District, telephone (541) 820–3311, e-mail *rllarson@fs.fed.us.*

SUPPLEMENTARY INFORMATION: In July and August of 2002, the Monument Fire burned approximately 24,525 acres, of which 20,186 occur on the Malheur National Forest. The remainder of the fire includes approximately 3,711 acres of land administered by the Wallowa-Whitman National Forest, and 628 acres of private land. The 8,600-acre decision area for the Monument Fire Recovery Projects includes those portions of the Monument Fire that occurred within the Little Malheur and North Fork Malheur Watersheds on the Malheur National Forest.

Proposed Action. Approximately 4,800 acres of timber harvest is proposed: 3,500 acres of salvage only, 700 acres of salvage plus removal/thinning of some live trees to improve

stand resiliency, and 600 acres of salvage in Riparian Conservation Habitat Areas (RHCAs) primarily to reduce standing fuel. Salvage harvest would include removal of trees killed or having high probability of dying as a result of the fire. These areas would be harvested using ground-based and helicopter logging techniques. Approximately 87 percent of the harvest area would be salvaged by helicopter. Following site preparation, approximately 4,200 acres would be planted with conifer seedlings. Due to snag density deficiencies, a Forest Plan amendment may be necessary for the implementation of the salvage proposals. The site-specific snag densities, based on local landscape and ecological conditions, may fall below the levels identified in the Forest Plan. In the fire area, appropriate stands (acres) will be designated to replace Dedicated Old Growth burned or no longer in suitable old-growth condition. Road activities associated with salvage and restoration include: approximately 0.4 miles of temporary road construction; approximately 17.3 miles of road decommissioning; 2.2 miles of skid trail restoration; and 7.0 miles of gated closures. The Little Malheur trailhead would be relocated approximately 2 miles below its present location.

Purpose and Need Action. The identified reasons why we propose and need this action now are: reduce levels of dead standing and down fuels that contribute to high severity fires within the natural return cycle for low-intensity/frequent-fire regime areas; capture the economic value of those trees that are surplus to other resource needs; improve timber stand resiliency to insects, disease, wildfire, and other disturbances; restore ecologically structural and compositional characteristics of upland vegetation; replace Dedicated Old Growth and Replacement Old Growth areas that burned and are no longer in suitable old-growth condition; re-vegetate fire-damaged riparian areas that have lost shade, bank stability, and the ability to filter overland erosion; and minimize the effects of runoff and precipitation that become concentrated flow when intercepted by road surfaces.

Possible Alternatives. A full reasonable range of alternatives will be considered, including a ''no-action'' alternative in which none of the activities proposed above would be implemented. Based on the preliminary issues gathered through scoping, the action alternatives could differ in: (1) The silvicultural and post-harvest treatments prescribed, (2) the amount and location of harvest, and (3) the amount and location of fuels reduction activity. Other alternatives to the proposed action could include: An alternative which does not require the construction of additional temporary roads and does not consider salvage removal from RHCAs; an alternative which emphasizes removal of dead timber in the size classes most likely to re-burn; and an alternative which considers various regeneration strategies, such as planting at relatively low stocking levels. Alternative development will be based, in part, on currently available science on snag and coarse woody debris-dependent species habitat. This could result in a proposal of a site-specific Forest Plan amendment to update standards and guidelines for these species.

Scoping Process. The scoping process will include: Identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues or those previously covered by a relevant environmental analysis, considering additional alternatives based on themes which will be derived from issues recognized during scoping activities, and identifying potential environmental effects of this proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions). Public participation will be sought at several points during the analysis process. The public will be kept informed of the EIS process through the quarterly publication of the ''Malheur National Forest's Schedule of Proposed Actions'' and letters to agencies, organizations, and individuals who have previously indicated their interest in such activities.

Issues. Preliminary issues identified include: Maintenance of soil and water quality; retention of snags; connectivity of wildlife habitat and big game cover; protection of fish habitat; deterioration of sawtimber; reduction of fuels; advancement of project economic viability; and maintenance of community stability.

Comments. Public comments about this proposal are requested in order to assist in scoping issues properly, determining how to best manage the resources, and analyzing environmental effects fully. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, with or without name and address, within a specified number of days.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA), and made available for public review by June 2003. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available September 2003.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft EIS stage, but that are not raised until after the completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action, participate by the close of the 45-day comment period, so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental

impact statement, or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, at 40 CFR 1503.3, in addressing these points.

The Forest Service is the lead agency. The Responsible Official is the Forest Supervisor, Malheur National Forest. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The Responsible Official may also decide on site-specific Forest Plan amendments regarding standards and guidelines for snag and coarse woody debris, as well as big game habitat, if warranted by the analysis of those components in light of recent science. The Responsible Official will document the Monument Fire Recovery Project decision and reasons for the decision, in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: March 14, 2003.

Roger Williams,

Forest Supervisor.

[FR Doc. 03–6901 Filed 3–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

East Fork Fire Salvage Project; Wasatch-Cache National Forest, Summit County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Supervisor of the Wasatch-Cache National Forest gives notice of the agency's intent to prepare an environmental impact statement on a proposal to harvest timber in the Bear River and Blacks Fork drainages. The headwaters of these drainages are located on the Evanston Ranger District about 40 miles south of Evanston, Wyoming in the Uinta Mountain Range. The proposed action was developed to salvage timber burned in the East Fork fire in June and July of 2002. The fire perimeter includes approximately 14,200 acres out of the 71,200 acres within the analysis area. The proposal addresses lands located primarily in the East Fork of the Bear River, Mill Creek, and West Fork of the Blacks Fork drainages located in Township 2 North, Ranges 10 East and 11 East, Salt Lake Meridian.

Temporary roads would be constructed to provide access for timber harvest in portions of the area. The proposal also includes reconstruction or relocation of some poorly designed or located existing roads.

DATES: Comments concerning the scope of the analysis must be received in writing by April 18th, 2003. A draft environmental impact statement is expected to be published in June 2003, with public comment on the draft material requested for a period of 45 days, and completion of final environmental impact statement is expected in September, 2003.

ADDRESSES: Send written comments to Stephen Ryberg, District Ranger, Evanston Ranger District, PO Box 1880, Evanston, WY 82930. Electronic mail may be sent to *lljohnson01@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Environmental Planner, (307) 789–3194, or Kent O'Dell, Timber Management Coordinator, (307) 782–6555, USDA Forest Service, Evanston Ranger District (See address above.)

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

1. To salvage timber killed by the fire before the commercial value is lost. There is an urgent need for harvest, because fire-killed trees typically do not maintain their merchantability for lumber for more than 1 to 3 years, depending upon species and size. Sapwood staining, checking, woodborer damage, and decay will affect volume and quality after that time. Smaller diameter trees typically will not be merchantable for lumber within a year while larger diameter trees can retain their merchantability longer but will lose their value as wood products in time.

2. Contributing opportunities for industry and communities in Utah and Wyoming that are dependent on national forest timber for a portion of their supply and economy.

Proposed Action

The proposal to salvage includes timber harvesting, construction of temporary roads, and minor reconstruction of existing system roads. Treatment will be limited to the salvage harvest of trees killed by the fire or expected to die within the next year due to fire damage. Primarily spruce, lodgepole pine, and subalpine fir trees will be salvaged. The proposal includes removing merchantable trees, while retaining green trees, unmerchantable trees, and large diameter snags for wildlife habitat. Approximately 1,148 acres within 24 units would be treated under the proposal. An estimated 6.5 miles of temporary roads would be needed to harvest timber under the proposal.

Proposed new road construction would be limited to that needed for access for harvest activities. These roads would be temporary, and decomissioned (restored) following harvest activities. There is no proposed road construction or timber harvest in inventioned roadless areas.

Some existing roads that will be used as haul routes would be reconstructed to improve the drainage design of the roads near stream crossings or relocated where the roads are near stream channels.

Responsible Official

The Responsible Official is Thomas L. Tidwell, Forest Supervisor, Wasatch-Cache National Forest, 8236 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

Nature of Decision To Be Made

The decision to be made is whether to implement the proposed activities listed above.

A determination of effects on Canada lynx will be required from the U.S. Fish and Wildlife Service.

Scoping Process

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. A public ''scoping'' open house is scheduled for March 18, 2003, in Evanston, Wyoming, at the Historic Railroad Depot on Front Street in Evanston, Wyoming, from 4 to 7 p.m. The purpose of this open house is to learn what issues members of the public or interested agencies believe are involved in the proposal. Knowledge of the issues will help establish the scope of the Forest Service environmental analysis and define the kind and range of alternatives to be considered. Forest Service officials will describe and explain the proposed actions and the process of environmental analysis and disclosure to be followed in evaluating this proposal. The Forest Service welcomes any public comments on the proposal.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 443 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.) Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 17, 2003.

Thomas L. Tidwell,

Forest Supervisor.

[FR Doc. 03–6899 Filed 3–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 1 p.m. until 5:15 p.m. on Friday, April 4, and from 8 a.m. until 12 noon, Saturday, April 5, 2003, in Petersburg, Alaska. The purpose of this meeting is to review, discuss and potentially recommend for funding proposals received pursuant to title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. Public testimony regarding the proposals will also be taken.

DATES: The meeting will be held commencing at 1 p.m. on Friday, April 4 through 12 noon, Saturday, April 5, 2003.

ADDRESSES: The meeting will be held at the Holy Cross House, Petersburg Lutheran Church, 407 Fram Street, Petersburg, Alaska.

FOR FURTHER INFORMATION CONTACT: Chip Weber, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *cweber@fs.fed.us,* or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, email *pagrantham@fs.fed.us.* For further information on RAC history, operations, and the application process, a Web site is available at *www.fs.fed.us/r10/payments.*

SUPPLEMENTARY INFORMATION: This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106–393). No new proposals (initial reading) will be discussed at this meeting. This meeting will serve as the second reading for proposals received for the February 2003 meeting; the RAC may recommend funding for some or all of these proposals during this meeting. The RAC may also review, discuss or make recommendations for funding for projects received for the January 2003 meeting. 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. It is anticipated that this will be the last meeting of the RAC until sometime in the fall of 2003.

Dated: March 17, 2003.

Olleke E. Rappe-Daniels,

Acting Forest Supervisor.

[FR Doc. 03–6907 Filed 3–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–a–c]

Opportunity To Comment on the Applicant for the Mississippi Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the Mississippi geographic area.

DATES: Comments must be postmarked or electronically dated on or before April 23, 2003.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647–S, 1400 Independence Ave., SW., Washington, DC 20250–3604; FAX 202–690–2755; e-mail *Janet.M.Hart@usda.gov.* All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 29, 2003, **Federal Register** (68 FR 4445), GIPSA

announced that the Mississippi Department of Agriculture and Commerce is voluntarily ceasing their official inspection operations effective June 30, 2003, and asked persons interested in providing official services in the Mississippi area to submit an application for designation by February 28, 2003. There was one applicant. Memphis Grain Inspection Service (Memphis), a designated official agency, main office located in Memphis, Tennessee, applied for the entire area specified in the January 29, 2003, **Federal Register**.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicant. All comments must be submitted to the Compliance Division at the above addresses. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: March 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–6912 Filed 3–21–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 020125021–2021–01]

Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Office for Civil Rights, Office of the Secretary, Department of Commerce.

ACTION: Notice of policy guidance with request for comment.

SUMMARY: The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance (''recipients'') from the U.S. Department of Commerce (DOC) and assist them in fulfilling their responsibilities to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.

DATES: This guidance is effective March 24, 2003. Comments must be submitted within 60 days from the date of this publication in the **Federal Register**. DOC will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Mr. Jorge Ponce, Office of Civil Rights, Room 6003, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, D.C. 20230. Comments may also be submitted by e-mail at *JPonce@DOC.gov.*

FOR FURTHER INFORMATION CONTACT: Jorge Ponce, Office of Civil Rights, telephone 202–482–8185, TDD: 202–482–2030. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: Under DOC regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with LEP. *See* 15 CFR 8.4(b)(2). The purpose of the LEP Guidance is to assist recipients in complying with their Title VI responsibilities to ensure that access to their programs or activities, normally provided in English, are accessible to LEP persons. It clarifies existing statutory and regulatory requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. It also reiterates DOC's longstanding position that in order to avoid discrimination against LEP persons on grounds of national origin, recipients must take adequate steps to ensure that such persons receive the language assistance necessary to afford them meaningful access to the programs, services, and information those recipients provide, free of charge.

Executive Order 13166 (E.O.), reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. The E.O. further directs that all such guidance documents be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' *See* 65 FR 50123 (August 16, 2000). On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. *See* 67 FR 41455 (June 18, 2002). The LEP Guidance is consistent with the goals set forth in E.O. 13166, and with the DOJ policy guidance documents dated August 16, 2002, and June 18, 2002.

Because this guidance must adhere to the federal-wide compliance standards and framework detailed in the model DOJ LEP Guidance, DOC specifically solicits comments on the nature, scope and appropriateness of the DOC-specific examples set out in this guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through the DOC.

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are exempt from notice and comment. Because this policy guidance is a general statement of policy without the force and effect of law, it falls within this exception and prior notice and opportunity for public comment is not required. This policy guidance is not subject to the requirements of Executive Order 12866.

Dated: February 28, 2003.

Suzan J. Aramaki,

Director, Office of Civil Rights.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' While detailed data from the 2000 census has not yet

been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law, including the preparation of a LEP plan, as appropriate. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the criteria the Department of Commerce (DOC) will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in some cases, LEP individuals may form a substantial portion of those encountered in federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance.

There are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department, in conjunction with DOJ, plans to continue to provide assistance and guidance in this important area. In addition, DOC plans to work with recipients, state and local administrative agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOC intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own Federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small localgovernments, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of the E.O. that applies to federally assisted programs and activities. Consistent with the position of DOJ detailed below, DOC takes n the position that this is not the case, and will continue to do so. Accordingly, DOC will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

The DOC regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' 15 CFR 8(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOC, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, the E.O. was issued—''Improving Access to Services for Persons with Limited English

[1] DOC recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the E.O. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance''). The DOJ role under the (E.O.) is unique. The E.O. charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address.

Subsequently, federal agencies raised questions regarding the requirements of the E.O., especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.*[3] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of the E.O. that applies to federally assisted programs and activities—the E.O. remains in force.

III. Who Is Covered?

The DOC regulations, 15 CFR 8.4(b)(2), require all recipients of federal financial assistance to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. The fundamental premise of the E.O. is that the Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language.

To this end, the E.O. provides that federal agencies shall work to ensure that recipients of federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. In general, the DOC does not fund recipients who, in turn, provide services and benefits of the entitlement-type to the general public. The DOC does, however, fund recipients of the following DOC programs who provide information and services to the public relating to various aspects of business or economic development:

- Economic Development Administration's Economic Adjustment Program and Trade Adjustment Program;
- International Trade Administration's Trade Development and Commercial Service programs; and
- Minority Business Development Agency's Minority Business Development Centers; Native American Business Development Centers; and Minority Business Opportunity Committee Program.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.[5]

Example: DOC provides assistance to a university to provide business development services to minority firms. All operations of the university—not just the business department—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with LEP.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DOC recipients and should be considered when planning language services include, but are not limited to:

- Persons who are seeking technical assistance about starting or expanding a business.
- Persons in rural and urban areas of the nations experiencing high unemployment, low income, or other severe economic distress.
- Persons in underserved communities interested in accessing telecommunications and information technologies.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a

[3] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. *See, e.g., Sandoval,* 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of federal agencies, including the Department of Commerce.

[5] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOC recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a geographic area serves a large LEP population, the appropriate service area is most likely the geographic area, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This LEP plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to emergency benefits or assistance to a person who has been the victim of a sudden natural disaster differ, for example, from those applicable to internet forums for beta testers of proposed small business software. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a Minority Business Development Center in a largely Asian-Pacific community may need immediately available oral interpreters and should give serious consideration to hiring some bilingual staff. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a recipient's facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: Oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[8] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in responding to someone who has suffered from a natural disaster, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOC recipients providing dislocation services to someone whose business was destroyed in an earthquake or hurricane, a recipient

[7] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

[8] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter . Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing personal, family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DOC recipient programs and activities, this is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children) or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a recipient's facility offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language

services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Surveys and questionnaires.
- Intake forms with the potential for important consequences.
- Notices advising LEP persons of free language assistance.
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses should not generally be considered vital, whereas applications for business counseling could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Guides. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOC recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, Minority Business Development Centers should, where appropriate, ensure that basic information to assist LEP individuals in obtaining information about how to start a business is explained.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[9] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[10] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of DOC recipients regarding certain health, and safety services and certain legal rights). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DOC recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to

[9] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[10] For instance, there may be languages which do not have an appropriate direct translation of some courtroom or legal terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high numbers of LEP persons seeking access to certain health, safety, dislocation or business assistance services or activities run by DOC recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[11]
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOC through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DOC will investigate whenever it

[11] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOC will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, DOC must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOC must secure compliance through the termination of federal assistance after the DOC recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOC litigation section to seek injunctive relief or pursue other enforcement proceedings. The DOC engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOC proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOC's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOC acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DOC will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOC recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

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BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Annual Survey of U.S. Direct Investment Abroad

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 23, 2003.

ADDRESSES: Direct written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov,* ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the information collection instruments and instructions to Obie G. Whichard, Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC 20230, or via the Internet at *obie.whichard@bea.gov,* ((202) 606–9890).

SUPPLEMENTARY INFORMATION:

I. Abstract

The BE–11, Annual Survey of U.S. Direct Investment Abroad, provides a variety of measures of the overall operations of nonbank U.S. parent companies and their nonbank foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The survey is a cut-off sample survey that covers all foreign affiliates (and their U.S. parent companies) above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The data from the survey are primarily intended as general purpose statistics. They should be readily available to answer any number of research and policy questions related to U.S. direct investment abroad. Policy areas of particular and lasting interest are trade in both goods and services, employment and employee compensation, taxes, and technology.

The form remains the same as in the past. No changes in language, data collected, or exemption levels are proposed.

II. Method of Collection

The survey will be sent each year to potential respondents in March and responses are due by May 31. A report must be filed by, or on behalf of, each nonbank U.S. business enterprise (U.S. Reporter) that owned 10 percent or more of the voting stock (or the equivalent) of a nonbank foreign business enterprise owned at least 20 percent by all U.S. Reporters of the foreign business enterprise combined, whether held directly or indirectly, for which any one of the following three items was greater than $30 million (positive or negative) at the end of, or for, the foreign business enterprise's fiscal year: (1) Total assets, (2) sales or gross operating revenues excluding sales taxes, or (3) net income after provision for foreign income taxes.

Potential respondents are the nonbank U.S. parent companies of nonbank foreign business enterprises that reported in the last benchmark survey of U.S. direct investment abroad, which covered the year 1999, along with the nonbank U.S. parent companies of those nonbank foreign business enterprises that subsequently entered the direct investment universe. The data collected are cut-off sample data. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0053.
Form Number: BE–11.
Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time Per Response: 74 hours is the average, but may vary according to the number, size, and complexity of the businesses covered by the response.

Estimated Total Annual Burden: 118,400 hours.

Estimated Total Annual Cost: $3,552,000 (based on an estimated reporting burden of 118,400 hours and an estimated hourly cost of $30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6882 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Direct Transactions of U.S. Reporter With Foreign Affiliate

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 23, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov,* ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the information collection instruments and instructions to Obie G. Whichard, Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC 20230, or via the Internet at *obie.whichard@bea.gov,* ((202) 606–9890).

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–577, Direct Transactions of U.S. Reporter with Foreign Affiliate, obtains quarterly data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parent companies. The survey is a cut-off sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, and the national income and product accounts. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The data from the survey are primarily intended as general purpose statistics. They should be readily available to answer any number of research and policy questions related to U.S. direct investment abroad.

The form remains the same as in the past. No changes in data collected, or exemption levels are proposed.

II. Method of Collection

Survey forms will be sent to U.S. parent companies each quarter; responses will be due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports should be filed within 45 days. A report must be filed for every foreign business enterprise whose voting stock (or the equivalent) is owned 10 percent or more by a U.S. business enterprise and for which any one of the following three items was greater than $30 million (positive or negative) at the end of, or for, the foreign business enterprise's fiscal year: (1) Total assets, (2) sales or gross operating revenues excluding sales taxes, or (3) net income after provision for foreign income taxes.

Potential respondents are the U.S-owned foreign business enterprises that were reported in the last benchmark survey of U.S. direct investment abroad, which covered the year 1999, along with the foreign business enterprises that subsequently entered the direct investment universe. The data collected are cut-off sample data. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0004.

Form Number: BE–577.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 13,500 per quarter; 54,000 annually.

Estimated Time Per Response: 1.25 hours is the average, but may vary according to the number, size, and complexity of the businesses covered by the response.

Estimated Total Annual Burden: 67,500 hours.

Estimated Total Annual Cost: $2,025,000 (based on an estimated reporting burden of 67,500 hours and an estimated hourly cost of $30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6884 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16–2003]

Foreign-Trade Zone 31—Granite City, IL, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Tri-City Regional Port District, grantee of Foreign-Trade Zone 31, requesting authority to expand its zone in the Granite City, Illinois, area, within/adjacent to the St. Louis, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 14, 2003.

FTZ 31 was approved on September 6, 1977 (Board Order 122, 42 FR 46568, 9/16/77) and expanded on January 16, 1985 (Board Order 289, 50 FR 3371, 1/24/85). The zone project currently consists of the following sites in the Granite City area: *Site 1* (47 acres, 2 parcels)—Tri-City Regional Port complex, 2801 Rock Road, Granite City; *Site 2* (90,000 sq. ft.)—1603 State Street, Granite City; *Site 3* (209,000 sq. ft.)—warehouse facility at 1100 Niedringhaus Avenue, Granite City; and, *Site 4* (122,600 sq. ft.) with 47,600 sq. ft. located at 2000 Access Road and 75,000 sq. ft. located at 1000 Access Road, Madison.

The applicant is now requesting authority to expand the general-purpose zone to include three new sites in Madison County, Granite City and St. Clair County, Illinois: *Proposed Site 5* (2,254 acres)—Gateway Commerce Center, intersection of 270 and Interstate 255, Madison County, IL; *Proposed Site 6* (458 acres)—River's Edge Industrial Park (part of the former U.S. Army Charles Melvin Price Support Center), 1635 West First Street, Granite City, IL; and, *Proposed Site 7* (3,851 acres)—MidAmerica Airport, adjacent to the Scott Air Force Base at the intersection of Interstate 64 and Route 4, St. Clair County, IL. The majority of Proposed Site 5 is owned by TriSTAR Business Communities or its affiliates. Proposed Site 6 is owned by the applicant and is a partially developed industrial park that is being converted from military use to commercial use. Proposed Site 7 is owned and operated by St. Clair County. This action will also formally delete Site 2 from the zone plan. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 23, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 9, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Offices of the Tri-City Regional Port District, 1635 W. First Street, Granite City, Illinois 62040–1838.

Dated: March 14, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–6928 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2002, 40–2002, 41–2002, 42–2002, 43–2002, 44–2002, 45–2002, 46–2002, 47–2002, and 48–2002]

Flint Ink North America Corporation—Applications For Foreign-Trade Subzone Status; Extension of Comment Period

The comment periods for the cases referenced above (67 FR 64088–64096, October 17, 2002) are being extended again, to July 7, 2003, at the request of the applicant, which will allow interested parties additional time in which to comment on the proposals. These ten related cases involve pending subzone applications from the following Foreign-Trade Zones:

Foreign-Trade Zone 143—Sacramento, California
Foreign-Trade Zone 170—Indianapolis, Indiana
Foreign-Trade Zone 182—Fort Wayne, Indiana
Foreign-Trade Zone 29—Louisville, Kentucky
Foreign-Trade Zone 47—Boone County, Kentucky
Foreign-Trade Zone 189—Kent-Ottawa-Muskegon Counties, Michigan
Foreign-Trade Zone 46—Cincinnati, Ohio
Foreign-Trade Zone 105—Providence, Rhode Island
Foreign-Trade Zone 21—Charleston, South Carolina
Foreign-Trade Zone 185—Culpeper, Virginia

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005.

Dated: March 14, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–6929 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Export License Services—Transfer of License Ownership, Requests for a Duplicate License

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 23, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625,

14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Both activities are services to exporters who have either lost the original license record and require a duplicate, or wish to transfer their ownership of approved license to another party. Both activities are currently approved under OMB control numbers 0694–0031 ans 0694–0051. BIS wishes to combine these activities into one collection authority as they both are services provided to the public after licenses have been issued.

II. Method of Collection

Written notification from respondent.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission of a new collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 200.
Estimated Time Per Response: 1 to 15 minutes per response.
Estimated Total Annual Burden Hours: 38.
Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 18, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6883 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Preliminary Notice of Intent To Rescind Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Preliminary notice of intent to rescind administrative review.

SUMMARY: On August 27, 2002, we published the notice of initiation of this antidumping duty review with respect to Thai Benkan Corporation, Ltd., (TBC). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Parr*, 67 FR 55000 (August 27, 2002) (*Notice of Initiation*). We have preliminarily determined that the review of TBC should be rescinded.

EFFECTIVE DATE: March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand (57 FR 29702). On July 1, 2002, the Department published a ''Notice of Opportunity to Request an Administrative Review'' on pipe fittings from Thailand (67 FR 44172). On July 31, 2002, the petitioner in this proceeding, Trinity Fitting Group, requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 2001, through June 30, 2002. On August 15, 2002, TBC submitted a letter certifying that neither it nor its U.S. affiliate, Benkan America, Inc., sold, exported or shipped for entry and/or consumption in the United States subject merchandise during the period of review (POR). We published a notice of initiation of the review with respect to TBC on August 27, 2002. *See Notice of Initiation*.

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Rescission of Administrative Review

As stated above, TBC submitted a letter certifying that neither it nor its U.S. affiliate Benkan America, Inc., sold, exported, or shipped for entry and/or consumption in the United States during the POR. Based on the Department's shipment data query, we are preliminarily treating TBC as a non-shipper for the purpose of this review. *See* Data Query (September 10, 2002). Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we preliminarily determine to rescind this review. Interested parties may submit comments on these preliminary results. *See e.g., Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Preliminary Notice of Intent to Rescind Administrative Review*, (67 FR 56531) (September 4, 2002); *Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review*, (65 FR 12209) (March 8, 2000).

Any interested party may request a hearing within 30 days of the date of publication of this preliminary notice. *See* 19 CFR 351.309. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may

submit briefs no later than 30 days after the date of publication of this preliminary notice. Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

This notice is in accordance with sections 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: March 14, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–6930 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-337–803]

Fresh Atlantic Salmon from Chile: Amended Final Results of 2000–2001 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 24, 2003.

SUMMARY: On February 11, 2003, the Department of Commerce (the Department) published in the **Federal Register** the Final Results of the administrative review of the antidumping duty order on fresh Atlantic salmon from Chile for the period July 1, 2000, through June 30, 2001. *See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile*, 68 FR 6878 (February 11, 2003) (Final Results). Based on the correction of a ministerial error, we have made a change to the margin calculation for respondents Cultivadora de Salmones Linao Ltda. and Salmones Tecmar S.A (collectively, Linao and Tecmar). However, the margin for Linao and Tecmar continues to be *de minimis*.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Constance Handley, at (202) 482–1376 or (202) 482–0631, respectively, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2003, the Department published in the **Federal Register** the Final Results of this administrative review.[1] In the Final Results, Linao and Tecmar received a de minimis margin of 0.29 percent. On February 11, 2003, L.R. Enterprises made a timely allegation that the Department had made an error in the calculation of the final margin for Linao and Tecmar. Specifically, L.R. Enterprises alleged that the Department incorrectly calculated the constructed export price (CEP) profit ratio in the margin program for the second sub-period.[2] *See* Memorandum from Daniel O'Brien, Case Analyst, to Holly Kuga, Acting Deputy Assistant Secretary, Group 2 concerning the ministerial error allegation, dated March 12, 2003 (*Ministerial Error Memo*).

Amended Final Results

After analyzing the ministerial error comment submitted by L.R. Enterprises, we have determined, in accordance with section 771(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224, that a ministerial error in the margin calculation for Linao and Tecmar was made.

After correcting the ministerial error the revised weighted-average margin is 0.31 percent, which is *de minimis*. The importer specific assessment rates are unchanged.

Assessment Rates

Absent an injunction from the U.S. Court of International Trade, the Department will issue appropriate assessment instructions directly to Customs within fifteen days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 17, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6939 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] On March 7, 2003, the Department published in the Federal Register an Amended Final Results of 2000-2001 Administrative Review. In this amended final, the effective date of revocation was established for the companies which were granted revocation from the order.

[2] We note that Linao and Tecmar were affiliated for only part of the period of review (POR). For the period November 15, 2000 through June 30, 2001 we collapsed Linao and Tecmar for purposes of our analysis. The final cash deposit rate was based on a weighted-average of the margins calculated for the two separate companies prior to November 15, 2000 (sub-period 1) and the margin calculated for the combined entity after that date (sub-period 2). L.R. Enterprises' allegation relates to the margin program for the combined entity.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Germany.

EFFECTIVE DATE: March 24, 2003.

SUMMARY: On February 10, 2003, the Department of Commerce published the final results for its review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period July 1, 2000, through June 30, 2001. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany, (Final Results)* 68 FR 6716 (February 10, 2003). We are amending our final results to correct ministerial errors alleged by respondent.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at 202–482–1121 or 202–482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and

10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note''1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under

[1] ''Arnokrome III''' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [5]

Amendment of Final Results

On February 10, 2003, the Department of Commerce (the Department) published its final results for its review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period of July 1, 2000 through June 30, 2001. *See Notice of Final Results of Antidumping Duty Administrative: Stainless Steel Sheet and Strip in Coils from Germany*, (*Final Results*) 68 FR 6716 (February 10, 2003).

In accordance with 19 CFR 351.224(c), on February 11, 2003, ThyssenKrupp Nirosta GmbH and ThyssenKrupp VDM GmbH (hereafter referred to as TKN) timely filed an allegation that the Department made ministerial errors in the *Final Results*. Petitioners did not comment on the *Final Results*.

TKN contends that in its *Final Results*, the Department inadvertently did not convert the U.S. sales and expense data of Ken-Mac, an affiliated reseller, from a per-pound basis to a per-hundredweight basis, consistent with other U.S. sales and expenses. In addition, TKN notes that the Department deducted indirect selling expenses incurred in the home market (DINDIRSU) from U.S. price for only Krupp Hoesch Steel Products, Inc. (KHSP)'s U.S. sales. The Department, however, did not include DINDIRSU in the CEP offset. *See* TKN's February 10, 2003 submission.

The Department's regulations define a ministerial error as one involving ''addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' 19 CFR 351.224(f).

After reviewing TKN's allegations we have determined, in accordance with 19 CFR 351.224, that the *Final Results* includes several ministerial errors. We agree with both allegations: we unintentionally overlooked converting Ken-Mac's U.S. sales and expense data from a per-pound basis to a per-hundredweight basis. Moreover, we unintentionally omitted DINDIRSU in the CEP offset for KHSP's U.S. sales. *See* 19 CFR 351.412(f). Therefore, we are amending the *Final Results* to the reflect the correction of the above-cited ministerial errors described above. All changes to the margin program can be found in the analysis memorandum. See Memorandum to the File from Patricia Tran through Robert James, Program Manager, ''Analysis for TKN for the Amended Final Results of the Administrative Review of Stainless Steel Sheet and Strip in Coils from Germany'' for the period of July 1, 2000 through June 30, 2001, dated March 17, 2003.

The revised weighted-average dumping margin is as follows:

Manufacturer / Exporter	Final Weighted-Average Margin (percentage)	Amended Final Weighted-Average Margin (percentage)
TKN	4.77	4.74

Consequently, we are issuing and publishing these amended final results and notice in accordance with section 751(a)(1) of the Tariff Act.

Dated: March 17, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6931 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–S

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limits for the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip (''SSSS'') from Taiwan.

EFFECTIVE DATE: March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Peter Mueller, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published a notice of opportunity to

request an administrative review of the antidumping duty order on SSSS from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 30, 2002, Yieh United Steel Corporation (''YUSCO'') and Chia Far Industrial Factory Co. Ltd.(''Chia Far''), Taiwanese producers of subject merchandise, requested that the Department conduct an administrative review of their sales of subject merchandise during the period of review (''POR''). On July 31, 2002, petitioners [1] requested that the Department conduct an administrative review of Chia Far, YUSCO, Tung Mung Development Co., Ltd. (''Tung Mung'') and Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen''). On August 27, 2002, the Department published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). The preliminary results of review are currently due on April 2, 2003.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(2) of the Department's regulations, state that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by 120 days. Completion of the preliminary results of this review within the 245-day period is impracticable for the following reasons:

• The review involves a large number of transactions and complex adjustments;
• All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships; and
• The review involves examining complex relationships between the producers and their customers and suppliers.

Therefore, in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, we are extending the time period for issuing the preliminary results of review by 90 days until July 1, 2003. The final results continue to be due 120 days after the publication of the preliminary results. This notice is issued and published in accordance with Section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations.

March 14, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–6934 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United States Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 29, 2002, Thyssen Krupp Acciai Speciali S.p.A. (''TKAST''), an Italian producer of subject merchandise requested that the Department conduct an administrative review. On August 27, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel sheet and strip in coils, for the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). The preliminary results of this administrative review are currently due no later than April 2, 2003.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results by 120 days, until no later than July 31, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: March 14, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–6935 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–009.

Applicant: Baylor College of Medicine, One Baylor Plaza, Houston, TX 77030.

Instrument: Electron Microscope, Model JEM–1230.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used in research to understand the molecular biology and replication strategies of rotaviruses and caliciviruses, visualize viruses from clinical isolates or grown in tissue culture, and visualizing virus-like particles, produced using a baculovirus expression system to determine particle integrity. The virus-like particles are used in research to develop vaccines against rotavirus and calciviruses.

Application accepted by Commissioner of Customs: February 20, 2003.

Docket Number: 03–010.

Applicant: Vanderbilt University, 110 21st Avenue South, Suite 1110, Nashville, TN 37203.

Instrument: Scanning Near-field Optical Microscope, Model AlphaSNOM.

Manufacturer: Wissenschaftliche Instrumente und Technologie GmbH, Germany.

Intended Use: The instrument is intended to be used to map, at scales as small as 1 nm, the morphological, optical, magnetic and electronic properties of many novel thin films and nanostructures. Research includes thin-film structures on MEMS components; silicon carbide power MOSFETS; pulsed laser deposition of organic films and organic/inorganic interfaces; and diamond nanotip applications.

Application accepted by Commissioner of Customs: February 27, 2003.

Docket Number: 03–011.

Applicant: Rice University, CBEN MS–63, P.O. Box 1892, Houston, TX 77251–1892.

Instrument: Electron Microscope, Model JEM–2010.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to investigate the microstructures and properties of biomaterials, nanomaterials, cells, tissues and related materials. Objectives pursued in these investigations include:

(1) Nano-articles: widely preparing nano-articles via chemical synthesis and elucidation of their structure/surface chemistry/catalysis relationships for advanced applications.

(2) DNA-coated gold nanoparticles: a method of Gold-nanoparticle attached phase transition will be introduced.

(3) Nanotubes: investigating controllable growth, reaction with cells, and their applications in AFM.

Application accepted by Commissioner of Customs: February 28, 2003.

Docket Number: 03–012.

Applicant: Beckman Research Institute of the City of Hope National Medical Center, 1450 E. Duarte Road, Duarte, CA 91010.

Instrument: Electron Microscope, Model Tecnai G^2 12 TWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used in biomedical research projects including:

(1) Dystrophia myotonica protein kinase (DMPK) RNA in myoblasts from individuals affected with muscular dystrophy.

(2) Physiology of Synapse.

(3) Hydrogen peroxides in intestinal inflammation in cancer.

Objectives of the investigations are:

(1) To understand how the pathogenic DMPK RNA molecules disrupt normal muscle tissue differentiation,

(2) To study membrane retrieval mechanisms after exocytosis, the role of dynamin in vesicle release and the role of choline acetyltransferase in the formation of synaptic vesicles, and

(3) To understand the role of glutathione peroxidase in the maintenance of healthy intestinal epithelia.

Application accepted by Commissioner of Customs: February 28, 2003.

Docket Number: 03–013.

Applicant: The University of Louisiana at Lafayette, 104 University Circle, Lafayette, LA 70504.

Instrument: Nuclear Microprobe System Components.

Manufacturer: Oxford Microbeams Limited, United Kingdom.

Intended Use: The instruments are intended to be used to develop a new system to provide analysis and imaging of microscopic areas on surfaces and near-surfaces of inorganic and organic materials. The objective of the experiments are to construct a prototypic system which can focus an ion beam into a spot size less than one micrometer square with sufficient beam current to allow elemental mapping of small areas on surfaces of materials and to use that system to develop techniques for microscopic materials analysis.

Application accepted by Commissioner of Customs: March 3, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–6933 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

MetroHealth Medical Center; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–006.

Applicant: MetroHealth Medical Center, Cleveland, OH 44109–1998.

Instrument: Electron Microscope, Model Tecnai G^2 12 TWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: See notice at 68 FR 8210.

Order Date: December 23, 2002.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–6932 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Corrections to Notice of Initiation of Countervailing Duty New Shipper Review: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Cho or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Corrections to Initiation and Preliminary Results Dates of Review

On March 5, 2003, the Department of Commerce published its Notice of Initiation of Countervailing Duty New Shipper Review: Certain Pasta from Italy, 68 FR 10446. In that notice, the intiation of the review was dated February 21, 2003. Further, we indicated that pursuant to 19 CFR 351.214(h)(i), we intend to issue the preliminary results of the review not later than 180 days from the date of publication of the notice.

We issue this notice to correct and amend the initiation and preliminary result dates of the review because of a typographical error. The intiation of the review should be dated February 27, 2003, and pursuant to 19 CFR 351.214(h)(i), we intend to issue the preliminary results of the review not later than 180 days from this corrected date of initiation.

This notice is published pursuant to section 751(a) of the Act and 19 CFR 351.214.

Dated: March 18, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6940 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the contact officer indicated for each individual mission below.

Commercial Security Trade Mission to Canada

Ottawa, Montreal and Toronto, June 16–19, 2003. Recruitment closes April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Irrera, U.S. Department of Commerce, telephone (514) 398–9695, ext. 2262, or e-mail to *Connie.Irrera@mail.doc.gov.*

Automotive Supply Chain Trade Mission to Central Mexico

Aguascalientes and Silao, September 21–24, 2003. Recruitment closes on June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Nielsen, U.S. Department of Commerce, telephone (520) 670–5540, or e-mail to *Eric.Nielsen@mail.doc.gov.*

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone (202) 482–5657, or e-mail *Tom_Nisbet@ita.doc.gov.*

Dated: March 18, 2003.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 03–6908 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Initiation of the Public Scoping Process for the Preparation of a Seagrass Restoration Programmatic Environmental Impact Statement (PEIS) for the Florida Keys National Marine Sanctuary (FKNMS) and a Coral Reef Restoration PEIS for FKNMS and Flower Garden Banks National Marine Sanctuary (FGBNMS)

AGENCY: National Marine Sanctuaries Program (NMSP) and the Office of Response and Restoration (OR&R), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice of public scoping process.

SUMMARY: The National Marine Sancturaries Program (NMSP) and hte Office of Response and Restoration (OR&R) intend to prepare a Programmatic Environmental Impact Statement (PEIS) for the restoration of seagrass communities in the Florida Keys National Marine Sanctuary (FKNMS) as well as a PEIS for the restoration of coral reef communities in FKNMS and the Flower Garden Banks National Marine Sanctuary (FGBNMS). A Notice of Intent (NOI) for the Coral PEIS was previously published on February 17, 2000, but document preparation has been delayed until now. The PEISs will describe and address physical injury to, loss of, and destruction of these communities that result from anthropogenic activities, such as vessel groundings and anchoring within the National Marine Sanctuaries. The PEISs will also describe and characterize the different approaches and methodologies that may be implemented to restore, replace, or acquire the equivalent of such injured, destroyed, or lost resources. This notice is being published in the **Federal Register** to advise other agencies and the public of the intent to prepare PEISs, and to obtain suggestions and information on the scope of issues to include in the document.

DATES: Written comments from all interested parties must be received on or before April 15, 2003. Two scoping meetings were held on March 6, 2003, in Marathon, Florida. Local media and targeted electronic mail listings are being used to notify those interested in development of the PEISs. The Final PEISs are expected to be completed by March 2004.

ADDRESSES: Written comments and requests for information should be sent to Harriet Sopher, NOAA National Marine Sanctuaries Program, SSMC–4, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, phone 301–713–3145 x109, *harriet.sopher@noaa.gov.*

Comments and materials received in response to this notice will be available for public inspection, by appointment, at the address above.

SUPPLEMENTARY INFORMATION: The National Marine Sanctuary System was established under the National Marine Sanctuaries Act (NMSA; previously known as title III of the Marine Protection, Research and Sanctuaries Act), 16 U.S.C. 1431 *et seq.* The NMSA

authorizes the Secretary of Commerce to identify and designate certain areas of the marine environment which are of special national significance as National Marine Sanctuaries, and provides authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner that complements existing regulatory authorities. Further, section 312 of the NMSA (16 U.S.C. 1443) provides that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages. Monies received are used to reimburse the Secretary for response actions and damage assessments and to fund the restoration, replacement, or acquisition of the equivalent of injured, destroyed, or lost Sanctuary resources.

To help protect and manage the ecological, historical, educational, recreational, and aesthetic qualities of the National Marine Sanctuaries, the National Marine Sanctuaries Program (NMSP) and OR&R will prepare a seagrass restoration PEIS for Florida Keys National Marine Sanctuary (FKNMS) and a coral reef restoration PEIS for the FKNMS and Flower Garden Banks National Marine Sanctuary. The PEISs, among other objectives, will set forth methodologies and guidelines for restoration actions arising out of injuries to Sanctuary resources. It is NMSP's intent to prepare these PEISs such that a tiered process can be used in the preparation of future environmental documents concerning restoration actions within National Marine Sanctuaries. Accordingly, the PEISs will facilitate the development of both subsequent environmental assessments (EAs) and individual restoration plans designed to restore Sanctuary resources.

Public scoping meetings were held in Marathon, FL, on March 6, 2003. Extensive local media and notification through targeted electronic mail listings are being used prior to the preparation of the Draft PEISs for those persons, agencies, and/or organizations interested in contributing comments for the development of the Draft PEISs. Public meetings will also be held concurrent with the public comment period to accept comments on the Draft PEIS. Notice of these subsequent meetings will be published in the **Federal Register.** All substantive comments provided during the public comment period, both written and oral, will be considered in the preparation of the Final PEIS and will become part of the public record (*i.e.,* names, addresses, letters of comment, comment provided during public meetings). Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. Comments and/or questions concerning the preparation of these PEISs should be directed to Harriet Sopher at the address or phone listed above.

The following draft outlines will form the basis for the scoping discussion.

Proposed draft outline for the Coral Reef Restoration PEIS:

1. Executive Summary
   1. Overview
   1.1.1 Introduction
   1.1.2 Background
   1.1.3 Purpose and need for action
   1.1.4 Summary and scope of programmatic environmental impact statement
2. Restoration Alternatives
   2.1 No Action
   2.2 Physical Restoration
   2.2.1 Debris, Sediment and Rubble Removal
   2.2.2 Emergency Stabilization
   2.2.3 Framework and Rubble Stabilization
   2.2.3.1 Limestone boulders and tremie concrete
   2.2.3.2 Preformed concrete/limestone units
   2.2.3.3 In situ formation of semi-artificial substrate
   2.2.3.4 Concrete pillows, geotextile mattresses, tubes filled with concrete
   2.2.3.5 Gabions, prefabricated steel or tenser grid cages containing loose rubble
   2.3.6 Revetment mats
   2.3 Biological Restoration
   2.3.1 Emergency Triage
   2.3.2 Transplantation
   2.3.3 Enhancement of Recruitment
   2.3.4 Community Modification
   2.4 Acquisition of Equivalent Natural Resources and Services
   2.5 Criteria for Determining Environmentally Appropriate Alternative(s)
   2.5.1 Recovery Time Horizons
   2.5.2 Potential for Collateral Injury
   2.5.3 Susceptibility to additional injury from natural disturbance events
   2.5.4 Susceptibility to additional injury from human-caused disturbances
   2.5.5 Technical feasibility
   2.5.6 Likelihood of success
   2.5.7 Significance of the injured resource
3. Affected Environment
   3.1 Habitat Types
   3.2 Florida Keys, Florida
   3.2.1 Physical Environment
   3.2.2 Biological Resources
   3.2.3 Cultural Resources
   3.2.4 Social and Economic Environment
   3.2.5 Existing Jurisdictional Responsibilities and Institutional Arrangements
   3.3 Flower Gardens and Stetson Bank, Gulf of Mexico
   3.3.1 Physical Environment
   3.3.2 Biological Resources
   3.3.3 Cultural Resources
   3.3.4 Social and Economic Environment
   3.3.5 Existing Jurisdictional Responsibilities and Institutional Arrangements
4. Environmental Consequences
   4.1 Environmental Impacts
   4.2 Cumulative Effects
   4.3 Mitigation Measures

Proposed draft outline for the Seagrass Restoration PEIS:

1. Purpose of and Need for Action
   1.1 Purpose
   1.2 Need for Proposed Action
2. Seagrass Restoration Alternatives
   2.1 Seagrass Restoration Selection Alternatives
   2.2 Seagrass Restoration Options
   2.2.1 No-Action
   2.2.2 Seagrass Transplants
   2.2.3 Bird Stakes
   2.2.4 Fertilizer Spikes
   2.2.5 Sediment Fill
   2.2.6 Sediment Tubes
   2.2.7 Berm Redistribution
   2.2.8 Channel Markers
   2.3 Proposed Actions
3. Affected Environment
   3.1 Location and Area Uses
   3.2 Surrounding Land Use
   3.3 Climate
   3.4 Air Quality
   3.5 Noise
   3.6 Geology
   3.7 Water Quality
   3.8 Physical Parameters
   3.9 Biological Resources
   3.10 Cultural Resources
   3.11 Hazardous and Toxic Substances
   3.12 Socioeconomics
   3.13 Quality of Life
4. Environmental and Socioeconomic Consequences
   4.1 Introduction
   4.2 No Action Alternative
   4.3 Seagrass Transplant Alternative
   4.4 Bird Stakes Alternative
   4.5 Fertilizer Spikes
   4.6 Sediment Fill Alternative
   4.7 Sediment Tubes
   4.8 Berm Redistribution Alternative
   4.9 Channel Markers
   4.10 Cumulative Effects
   4.11 Mitigation Measures
   4.12 Conclusions
5. Implementation of the Regional Restoration Plan
6. Relationship to Other Laws and Programs

Dated: March 3, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–6878 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 21; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to receive comments on the Council's proposed Amendment 21 to the Reef Fish Fishery Management Plan (Amendment 21) to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves beyond their June 16, 2004, expiration date.

DATES: The public hearing will be held in April. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to, and copies of the scoping document are available from, the Gulf Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION: The public hearing will be convened on the Council's proposed Amendment 21 to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves beyond their June 16, 2004, expiration date.

The Madison/Swanson and Steamboat Lumps marine reserves were implemented on June 19, 2000, with a 4–year sunset provision. The Madison/Swanson site is approximately 115 square nautical miles in size and is located about 40 nautical miles southwest of Apalachicola City, FL. Steamboat Lumps is approximately 104 square nautical miles in size and is located about 95 nautical miles west of Tarpon Springs, FL. Within each area, fishing is prohibited for all species except for highly migratory species, i.e., tunas, marlin, oceanic sharks, sailfishes, and swordfish. These marine reserves were created primarily to protect a portion of the gag spawning aggregations and to protect a portion of the offshore population of male gag. The areas are also suitable habitat and provide protection for many other species, such as scamp, red grouper, warsaw grouper, speckled hind, red snapper, red porgy, and others.

It was the Council's intent to prohibit the use of any fishing gear within the closed areas in order to maximize enforceability of the closed area as well as minimize the negative impact from incidental catch and release of reef fish while targeting other species. For this reason, the Council asked that the NMFS Highly Migratory Species (HMS) Division implement compatible closed area regulations for the species under their management jurisdiction (tunas, swordfish, oceanic sharks, and billfishes). This led to a legal challenge from a recreational fishing organization. The recreational organization felt that restrictions on fishing for migratory species higher up in the water column were unwarranted because they would have no impact on the bottom reef fish species. As part of a settlement to the legal challenge, NMFS agreed to hold the Council's request to implement an HMS closure in abeyance while research is conducted into the impact of the no-take areas, the effect of pelagic trolling on and ability to reach reef fish species, and the impact on enforceability by allowing pelagic trolling in the no-take areas. Reports on the results of the research into these areas are scheduled to be presented at the May 12–15, 2003, Council meeting where final action is to be taken. No action will result in the two reserves expiring on June 16, 2004, and the areas re-opening to all fishing.

The public hearing will be held from 7 p.m. to 10 p.m.Wednesday, April 9, 2003, Tampa Airport Hilton, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

In addition, public testimony will be taken at the May 12–15, 2003, Council meeting at the Edgewater Beach Resort, 11212 Front Beach Road, Panama City Beach, FL. (The exact date and time for public testimony at the May Council meeting will be announced at a later time.)

Copies of the draft amendment for these meetings can be obtained by calling 813–228–2815.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 2, 2003.

Dated: March 19, 2003.

Richard W. Surdi,

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

[FR Doc. 03–6958 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Enforcement Oversight Committee and Advisory Panel and its Groundfish Oversight Committee in April, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on April 7 and 8, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Newburyport and Wakefield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, April 7, 2003 at 9:30 a.m. – Joint Enforcement Committee and Advisory Panel Meeting.

Location: New England Fishery Management Council Office, 50 Water Street, Mill ı2, Newburyport, MA 01950; telephone: (978) 465–0492.

The committee and advisory panel will discuss and review the Monkfish enforcement analysis. They will also discuss and review the Habitat enforcement analyses for Amendment 10 to the Scallop Fishery Management Plans (FMP) and Groundfish Amendment 13 FMP. They also plan to discuss and recommend Vessel Monitoring System (VMS) requirements in the U.S./Canada agreement area. The U.S.Coast Guard is concerned if there are (1) vessels required to have VMS, and (2) vessels in the area that just sign-in for a fixed period, at the same time. Given time they will review other business.

Tuesday, April 8, 2003 at 9:30 a.m. – Groundfish Oversight Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

The committee will meet to continue development of Amendment 13 to the Northeast Multispecies (FMP). They will provide additional advice and guidance in order to clarify the management measures that have been identified for the Amendment. They will also refine the measures for administering a hard Total Allowable Catch (TAC), will consider and act on advice from the NMFS on improvements to other measures, and will develop recommendations to improve the administration of an alternative to use fishing years 1996 through 2001 as the baseline period for establishing effective days-at-sea for limited access permits. The Committee will receive a report on measures to implement a U.S./Canada resource sharing understanding and may develop additional recommendations for the Council's consideration. Also on the agenda is the review analysis of rebuilding periods and reference points provided by the Plan Development Team.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 19, 2003.

Matteo J. Milazzo,

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

[FR Doc. 03–6959 Filed 3–21–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Commercial Availability Request under the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

March 20, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain cotton corduroy fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA.

SUMMARY: On March 17, 2003 the Chairman of CITA received a petition from Breaker Jeanswear/ARC International alleging that certain dyed cotton corduroy fabrics (see Annex I for product specifications), classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel of such fabrics be eligible for preferential treatment under the ATPDEA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 8, 2003, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Contact: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The ATPDEA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The ATPDEA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. Pursuant to Executive Order No. 13277 (FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (FR Doc. 02-30427), the President's authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA has been delegated to CITA.

On March 17, 2003, the Chairman of CITA received a petition from Breaker Jeanswear/ARC International of Miami, Florida, alleging that certain dyed cotton corduroy fabrics, (see Annex I for product specifications), classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the ATPDEA for apparel articles that are both cut and sewn in one or more ATPDEA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be received no later than April 8, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely

review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Annex I

Product Specifications:

1. Dyed Corduroy Fabric:

Fiber Composition:	100 % cotton
Fabric weight:	271 g/m2 (grams per square meter)
Construction:	Woven 20 x 45, 16s x 16s 6 - 8 wales per centimeter

2. Dyed Corduroy Fabric:

Fiber Composition(s):	98% cotton, 2% spandex 97% cotton, 3% spandex
Fabric weight:	271g/m2 (grams per square meter)
Construction:	Woven 20 x 45, 16s x 16s plus 70 denier (spandex) 6-8 wales per centimeter

[FR Doc.03–7061 Filed 3–20–03; 1:53 pm]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request; Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than May 23, 2003.

ADDRESSES: Written comments should be captioned ''Citizens Band Base Station Antennas'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1204, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION:

A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Antennas (16 CFR part 1204) to reduce risks of death and serious injury that may result if an omnidirectional antenna contacts an overhead power line while being erected or removed from its site. The standard contains performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR Part 1204, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of antennas subject to the standard to help protect the public from risks of injury or death associated with omnidirectional citizens band base station antennas. More specifically, this information helps the Commission determine that antennas subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if omnidirectional citizens band base station antennas fail to comply with the standard in a manner which creates a substantial risk of injury to the public. The Office of Management and Budget approved the collection of information in the certification regulations under control number 3041–0006. OMB's most recent extension of approval expires on May 31, 2003. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

B. Estimated Burden

The Commission staff estimates that about 5 firms manufacture or import citizens band base station antennas subject to the standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens band base station antennas is approximately 1,100 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $42.32, for an estimated annual cost to the industry of $46,552.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 19, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–6960 Filed 3–21–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 23, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: March 18, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: State educational agency local educational agency, and school data collection and reporting under ESEA, title I, part A.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary), Federal government (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 33759.

Burden Hours: 2586428.

Abstract: Title I, part A of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act, requires State educational agencies, local educational agencies, and schools to collect and disseminate information to document progress, inform parents and the public, and provide services to at-risk students and their teachers.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2142. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *kathy.axt.@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: New collection.

Title: Federal Perkins Loan Program Master Promissory Note (JS).

Frequency: On occasion, annually.

Affected Public: Individuals or household (primary), businesses or other for-profit, not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 690,000.

Burden Hours: 345,000.

Abstract: The promissory note is the means by which a Federal Perkins Loan borrower promises to repay his or her loan.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2185. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese,

Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Fiscal Operations Report for 2002–2003 and Application to Participate for 2004–2005 (FISAP) and Reallocation Form E40–4P (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), businesses or other for-profit, State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 25876.

Abstract: This application data will be used to compute the amount of funds needed by each school for the 2004–2005 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2002–2003 award year, and as part of the school funding process. The reallocation form is part of the FISAP on the web. Schools will use it in the summer to return unexpended funds for 2002–2003 and request supplemental FWS funds for 2003–2004.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2208. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–6873 Filed 3–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 23, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 18, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New collection.

Title: Culturally Based Education for American Indian/Alaska Native Students: School Feasibility Survey and Questionnaire (KI).

Frequency: Other: one-time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 180.

Burden Hours: 205.

Abstract: This survey is proposed as part of a feasibility study to determine whether it is possible to conduct experimental or quasi-experimental studies in Native language and culture educational interventions. This survey will identify possible study sites. These sites must have culturally based education programs in place for American Indian and Alaska Natives students and must indicate that it is possible to conduct such a scientifically designed study.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2242. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.ingalls@ed.gov* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–6874 Filed 3–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Written Findings and Compliance Agreement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means of bringing about such compliance. On April 4, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered into a compliance agreement with the Montana Office of Public Instruction (OPI). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carlos Martínez, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 3W212, Washington, DC 20202–6132. Telephone: (202) 260–2493.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards aligned with its content standards that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

OPI submitted, and the Department approved, evidence that it has content standards in at least reading/language arts and mathematics. In November 2000, OPI submitted evidence of its final assessment system. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that OPI's proposed final assessment system did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient ''is failing to comply substantially with any requirement of law'' applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

20 U.S.C. 1234c(a)(1) through (a)(4).

In a letter dated July 6, 2001 to Linda H. McCulloch, Superintendent of Public Instruction for Montana, the Acting Deputy Assistant Secretary notified OPI that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means for bringing about such compliance.

On April 4, 2002, the Assistant Secretary issued written findings, holding that compliance by OPI with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its assessment system for peer review in November 2000, OPI was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, OPI administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps OPI has already taken to comply and the plan it has developed for further action. The agreement sets out the action plan that OPI must meet to come into compliance with the Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely OPI's progress in meeting the terms of the compliance agreement. The Superintendent of Public Instruction for Montana, Linda H. McCulloch, signed the agreement on April 1, 2002 and the Assistant Secretary signed the compliance agreement on April 4, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: March 12, 2003.

Eugene W. Hickok,

Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20

U.S.C. 1234c and 1234f, that the Montana Office of Public Instruction (OPI) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for OPI to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that OPI failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory timeframe.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with OPI to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, OPI will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards.

By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.

20 U.S.C. 6311(b)(3).[1]

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is ''failing to comply substantially with any requirement of law applicable to such funds.'' 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance until a future date is genuinely not feasible and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. 1234f(d).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and OPI is appropriate, the Assistant Secretary must first determine whether compliance by OPI with the Title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. 1234f(b). The second issue that the Assistant Secretary must resolve is whether OPI will be able, within a period of up to three years, to come into compliance with the Title I requirements. Not only must OPI come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a compliance agreement between the Assistant Secretary and OPI would not be appropriate.

B. OPI Has Failed To Comply Substantially With Title I Standards and Assessment Requirements

In November 2000, OPI submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that OPI's proposed final assessment system did not meet a number of the Title I requirements. Specifically, the Acting Deputy Assistant Secretary determined that OPI must do the following:

- Provide evidence that Montana's performance standards are aligned with your State content standards, and that a broad base of stakeholders was involved in the development of the performance standards.
- Complete the development of the second phase of the Montana assessment system addressing multiple measures that assess higher order thinking skills and the portions of the State standards that are not currently being assessed. Montana must describe the design of this phase of the assessment system, including the content to be assessed, the processes by which the system is to be created, the nature of the scores to be produced, and how the scores will be aggregated for decision making at the school, district, and State levels.

[1] On January 8, 2002, Title I of the Elementary and Secondary Education Act was reauthorized by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

• Provide evidence of further objective alignment studies completed by teachers and other experts knowledgeable about Montana's content standards and submit the results for peer review. Montana previously submitted for peer review evidence of a study done by the contractor of the alignment between the ITBS and ITED and Montana's content standards.

• For the Alternate Assessment Scale, Montana must provide evidence of technical quality, the timeline for implementation, and the role of the Scale in the State's accountability system.

• Provide complete participation data for students with disabilities and limited English proficient students so that Montana's inclusion practices relating to assessment, reporting, and accountability can be evaluated.

• Provide data showing that all assessments used in Montana for Title I accountability meet commonly accepted professional standards for technical quality consistent with the uses made of the results.

• Develop and disseminate annual school reports that display assessment results for all students, disaggregated by gender, major racial/ethnic groups, limited English proficient status, migrant status, students with disabilities as compared to non-disabled students, and economically disadvantaged students compared to non-disadvantaged students.

• Upon completion of the development of performance standards, individual student interpretive and descriptive reports must be generated and disseminated to parents to inform them how well their students are meeting those performance standards.

• Provide the Department with the State's definition of ''full academic year'' for including students in determining adequate yearly progress.

C. OPI Cannot Correct Immediately its Noncompliance With the Title I Standards and Assessment Requirements

Under the Title I statute, OPI was required to implement its final assessment system no later than the 2000–2001 school year. 20 U.S.C. 6311(b)(6). OPI submitted evidence of its assessment system in November 2000, but the Acting Deputy Assistant Secretary determined, on the basis of that evidence, that OPI's system did not fully meet the Title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Acting Deputy Assistant Secretary's concerns, OPI was not able to complete that task between the time it submitted its system for review and the spring 2001 assessment window. Thus, in March 2001, OPI administered the assessment that the Acting Deputy Assistant Secretary had determined did not meet the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for OPI to come into compliance until a future date.

D. OPI Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years

At the public hearing, OPI presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years. For example, OPI developed, for grades 4, 8 and 12, a set of approved content standards in reading and mathematics as well as standards in a number of other areas such as science and social studies. OPI also developed performance descriptors in reading and mathematics. OPI has also developed and administered an Alternate Assessment Scale for students with disabilities. It must modify the Alternate Assessment Scale, however, to ensure full alignment and inclusion of all students. Moreover, OPI has committed resources and personnel to continue the work of developing, aligning, implementing, and evaluating its assessment system.

Finally, OPI has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that OPI has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, OPI is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that OPI will be well on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that OPI must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether OPI is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the Title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of OPI to comply with the terms and conditions of the compliance agreement, it is possible for OPI to come into full compliance with the Title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by OPI with the standards and assessment requirements of Title I is not feasible until a future date; and (2) that OPI can meet the terms and conditions of the attached compliance agreement and come into full compliance with the Title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with OPI. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: April 4, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Appendix B—Text of the Compliance Agreement

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the Montana Office of Public Instruction

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (Title I) required each State, including the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards.

The Montana Office of Public Instruction (OPI) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive Title I funds while working to comply with the statutory requirements, the Superintendent of Public Instruction indicated OPI's interest in entering into a compliance agreement with the Office of Elementary and Secondary Education (OESE) of the United States Department of Education. On December 10, 2001, OESE conducted a public hearing regarding OPI's ability to come into compliance with the Title I standards and assessment requirements within three years. Based on testimony at that hearing, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) determined that compliance by OPI with the Title I standards and assessment requirements was genuinely not feasible until a future date. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of steps OPI has already taken to address its noncompliance, its commitment of resources and the action plan it has developed. The Assistant Secretary's written findings are incorporated into this agreement.

Pursuant to this compliance agreement under 20 U.S.C. 1234f, OPI must be in full compliance with the requirements of Title I no later than three years from the effective date of this agreement. Specifically, OPI must meet, and document that it has met, the following requirements:

1. Complete development of performance standards by aligning performance descriptors to Montana's content standards and set cut scores on the assessments that define levels of performance.

2. Develop or select an academic assessment system that represents the full range of Montana's content standards and performance standards in at least reading/language arts and mathematics consistent with the Title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with Montana's content and student performance standards.

3. Document that all students are included in the assessment system, particularly limited English proficient students and students with disabilities. Include test results for all students in school accountability measures. Monitor school-level decisions regarding inclusion of all students in the assessment system.

4. All assessments used in the State for Title I accountability must meet commonly accepted professional standards for technical quality consistent with the uses made of the results. For the Alternate Assessment Scale, Montana must provide evidence of technical quality.

5. Develop and disseminate individual student interpretive and descriptive reports. Report assessment results for the state, each district, and school that are disaggregated by all required categories.

6. Meet requirements under the No Child Left Behind Act of 2001 related to assessments and accountability.

During the period that this compliance agreement is in effect, OPI is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this agreement, as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements. Specifically, the compliance agreement sets forth action steps OPI must meet to come into compliance with the Title I standards and assessment requirements. OPI must submit documentation concerning its compliance with these action steps.

The action steps incorporated into this compliance agreement may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the agreement.

If OPI fails to comply with any of the terms and conditions of this compliance agreement, including the action steps below, the Department may consider the agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. 1234f(d).

For the Montana Office of Public Instruction:

Linda H. McCulloch,
Superintendent of Public Instruction.
April 1, 2002

For the United States Department of Education:

Susan B. Neuman,
Assistant Secretary, Office of Elementary and Secondary Education.

April 4, 2002.

Date this compliance agreement becomes effective: April 5, 2002

Expiration date of this agreement: April 5, 2005.

BILLING CODE 4001–01–P

COMPLIANCE AGREEMENT
UNDER TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT
BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION AND
THE MONTANA OFFICE OF PUBLIC INSTRUCTION

ACTION PLAN

REQUIREMENT 1 - Complete development of performance standards by aligning performance descriptors to Montana's content standards and set cut scores on the assessments that define levels of performance. [Performance Standards]

Action Steps for Requirement 1	Completion Date	Evidence	Office Responsible	Fiscal Resources
Describe the process to be used for developing performance standards in reading and math; including procedures for setting cut scores.	June 30, 2002	Work plan	Assessment Office Title I Office	Title II, Title VI
Review the previously state approved performance descriptors and levels with an external consultant leading Montana educators through the process. The process will validate alignment to content standards with revisions as necessary. - Review existing labels for four performance levels. - Include broad-based groups of Montana educators (including	August 31, 2002	New document demonstrating the performance levels and descriptors Documentation of alignment with content standards	Assessment Office Title I Office Accreditation Office Special Education Office Bilingual Office	Title VI; Special Education

experts in special education and LEP) in the review and revision of performance descriptors for each level to align with each content standard and benchmark for each grade.				
Complete a review to ensure alignment of performance descriptors with content standards and assessments considering comprehensiveness, emphasis, and depth. Ensure that specificity of skills identified for the performance descriptors are sufficiently detailed for subsequent work in augmenting the CRTs, revising the Alternate Assessment Scale, and establishing cut scores.	September 30, 2002	Documentation of alignment of performance descriptors with content standards and assessments	Assessment Office Title I Office Accreditation Office Special Education Office Bilingual Office	Title VI; Special Education
Review performance descriptors based on results of the pilot test administration of assessments (including the revised Alternate Assessment Scale). Set preliminary cut scores on assessments by applying generally accepted standards and procedures.	August 31, 2003	Preliminary cut scores based on performance levels and descriptors	Assessment Office Title I Office Accreditation Office Special Education Office Bilingual Office	Title VI

Review performance descriptors based on results of first full administration of assessments. Set final cut scores on assessments by applying generally accepted standards and procedures.	July 31, 2004	Final cut scores based on performance levels and descriptors	Assessment Office Title I Office Accreditation Office	Title VI
Documentation that the state has formally approved the performance cut scores.	August 31, 2004	Letter with the approval date provided by the State Superintendent to ED	Assessment Office Title I Office Accreditation Office	Title VI
Document how performance standards are aligned with the content standards, are challenging for all students, were developed with broad-based involvement, and that all students are held to the same high performance standards.	October 31, 2004	Alignment report, technical manual, list of people that participated in development, and participation rates for all students	Assessment Office Title I Office Accreditation Office	Title VI
Documentation sent to the USED for formal peer review of performance standards, along with entire set of assessment evidence for peer review.	November 30, 2004	Documents shipped, including Superintendent's approval letter	Assessment Office Title I Office Accreditation Office	Title VI

REQUIREMENT 2 - Develop or select an academic assessment system that represents the full range of Montana's content standards and performance standards in at least reading/language arts and mathematics consistent with the Title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with Montana's content and student performance standards. [Full assessment system and alignment]

Action Steps for Requirement 2	Completion Date	Evidence	Office Responsible	Fiscal Resources
Issue a Request for Proposals for an off-the-shelf criterion-referenced test in reading and math for grades 4, 8 & 11.	February 1, 2002	Copy of RFP	Title I Office Assessment Office	Title I, Title II
Form broad-based advisory groups consisting of content area teachers, superintendents, principals, curriculum directors, special educators, state Title III director , and representatives of professional education organizations. Form RFP Evaluation Committee representative of the above, geographic regions, and district size.	March 18, 2002	Letters of invitation and list of advisors and the Evaluation committee members	Title I Office Assessment Office	Title I, Title II
Review by teachers of content area match in proposals submitted by vendors; written advice submitted.	April 5, 2002	Written advice to RFP selection committee	Title I Office Assessment Office	Title I, Title II

Review by other advisors of proposals; written advice submitted.	April 5, 2002	Written advice to RFP selection committee	Title I Office Assessment Office	Title I, Title II
Review of proposals and recommendation by RFP Evaluation committee.	April 10, 2002	Written recommendation to State Procurement Bureau	Title I Office Assessment Office	Title I, Title II
Negotiate and sign a contract for a CRT for Phase 2 of an assessment system for Title I purposes. (MontCAS Phase 2).	April 30, 2002	Signed Contract	Title I Office Assessment Office	Title I, Title II
Conduct an analysis of the alignment of the selected reading and math assessments for grades 4, 8, and 11 with Montana's standards, identifying any gaps or weaknesses in the alignment. Process to be conducted by external independent consultant(s) as arranged by Northwest Regional Educational Laboratory (NWREL).	June 30, 2002	Report on persons involved, activities, dates, and preliminary findings	Title I Office Assessment Office	Title I, Title II, NWREL resources
Report on alignment study for reading and math, grades 4, 8, and 11.	August 31, 2002	Report of alignment study	Title I Office Assessment Office	Title I, Title II, NWREL resources

Develop items to fill gaps in alignment for reading and math, grades 4, 8, and 11 utilizing content standards and revised performance descriptors to ensure that higher order thinking skills are included.	December 31, 2002	Test items map and specifications	Title I Office Assessment Office	Title VI
Develop procedures for pilot test administration, scoring, and data analysis.	January 31, 2003	Testing Procedures Document	Title I Office Assessment Office	Title VI
Conduct item try-outs for reading and math, grades 4, 8, and 11 using an empirical sample.	February 28, 2003	Analysis of new item performance	Title I Office Assessment Office	Title VI
Complete review of these test items for bias to ensure that results measure the essence of the standards and do so for students of diverse backgrounds.	March 31, 2003	Results of item analyses (DIF)	Title I Office Assessment Office	Title VI
Conduct inservice for district test coordinators for pilot administration.	April 30, 2003	Schedule of training	Title I Office Assessment Office	Title VI
Administer pilot tests in reading and math, grades 4, 8, and 11 including new added items.	May 31, 2003	Pilot test schedule	Title I Office Assessment Office	Title VI
Complete any needed adjustments in the test forms and administration procedures for new tests in reading and math, grades 4, 8, and 11.	December 31, 2003	Report adjustments made	Title I Office Assessment Office	Title VI

Conduct inservice for district test coordinators for full administration.	March 31, 2004	Schedule of training	Title I Office Assessment Office	Title VI
First full administration of new tests in reading and math, grades 4, 8, and 11 with the additional new items.	April 30, 2004	Schedule for testing	Title I Office Assessment Office	Title VI
Set Performance Standards (see details under Requirement 1 above).	August 31, 2004			
Submit assessment system to USED for peer review.	October 31, 2004	Documents shipped, including Superintendent's approval letter	Title I Office Assessment Office	Title VI

REQUIREMENT 3 - Document that all students are included in the assessment system, particularly limited English proficient students and students with disabilities. Include test results for all students in school accountability measures. Monitor school-level decisions regarding inclusion of all students in the assessment system. [Inclusion]

Action Steps for Requirement 3	Completion Date	Evidence	Office Responsible	Fiscal Resources
Investigate the appropriate accommodations for LEP students (linguistically appropriate) and for students with disabilities to determine the practicality of those accommodations for the CRT.	September 30, 2002	List and description of accommodations for the CRT	Assessment Office Title I Office Special Education Office Bilingual Office	Title VI Special Education Title III

Review and refine as necessary previously developed policies for including students with disabilities in the statewide assessment system. Revise and refine as necessary/reissue Guidance Document, as necessary.	November 30, 2002	Guidance Document and Policies	Assessment Office Title I Office Special Education Office	Title VI Special Education
Review and refine as necessary previously developed policies for including LEP students in the statewide assessment system. Revise and refine as necessary/reissue Guidance Document, as necessary.	November 30, 2002	Guidance Document and Policies	Assessment Office Title I Office Bilingual Office	Title VI Title III
Develop statewide monitoring procedures to ensure the inclusion of all students.	November 30, 2003	Monitoring procedures	Assessment Office Title I Office Bilingual Office Special Education Office	Title VI Title III Special Education
Complete technical studies and manual for Alternate Assessment Scales.	August 31, 2004	Technical Manual	Assessment Office Title I Office Bilingual Office Special Education Office	Title VI Special Education
Complete technical studies and manual for accommodating LEP students in the state assessments.	August 31, 2004	Technical Manual	Assessment Office Title I Office Bilingual	Title VI Title III Special Education

			Office Special Education Office	
Document that all students are included in the assessment system, especially LEP and students with disabilities.	August 31, 2004	Participation rates	Assessment Office Title I Office Bilingual Office Special Education Office Measurement and Accountability Office	Title VI Title III Special Education

Requirement 4 - All assessments used in the State for Title I accountability must meet commonly accepted professional standards for technical quality consistent with the uses made of the results. For the Alternate Assessment Scale, Montana must provide evidence of technical quality. [Technical Quality]

Action Steps for Requirement 4	Completion Date	Evidence	Office Responsible	Fiscal Resources
Establish a Technical Advisory Panel consisting of external experts. The primary purpose of the panel is to provide technical advice and assistance. Panel will meet quarterly.	May 31, 2002	List of panel members	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education

Conduct preliminary technical quality analyses of the pilot of the CRT and the revised AAS, consistent with requirements under USED Peer Review Guidance.	August 31, 2003	Technical reports and report of the Technical Advisory Panel	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education
Make any necessary adjustments to the CRT and AAS based on the findings from the review of the technical reports by the Technical Advisory Panel.	December 31, 2003	Confirmation of changes made to the assessments	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education
Conduct technical quality analyses of the first full administration of the CRT (and the AAS, if necessary).	July 31, 2004	Technical reports and report of the Technical Advisory Panel	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education
Complete all technical reports for the CRT and AAS.	August 31, 2004	Technical reports/manuals	Title I Office Assessment Office Special Education Office	Title VI, Special Education

			Bilingual Office	
Provide evidence of technical quality to USED for peer review.	November 30, 2004	Technical manuals	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education

REQUIREMENT 5 - Develop and disseminate individual student interpretive and descriptive reports. Report assessment results for the state, each district, and school that are disaggregated by all required categories. [Reporting]

Action Steps for Requirement 5	Completion Date	Evidence	Office Responsible	Fiscal Resources
Design a reporting template that has all required categories of disaggregated students by achievement level.	November 30, 2003	Sample report	Title I Office Assessment Office	Title VI

Design and provide a reporting template for school, district, and state profiles that clearly communicates to educators, parents and stakeholders how the assessments relate to the content and achievement standards.	November 30, 2003	Sample report	Title I Office Assessment Office	Title VI
Design an individual student interpretive and descriptive report that is understandable for all parents.	November 30, 2003	Sample report	Title I Office Assessment Office	Title VI
Describe the procedures for reporting the performance of small schools, small student subgroups, and K-3 schools.	December 31, 2003	Written procedures	Title I Office Assessment Office	Title VI
Document that the state provides school, district, and state reports disaggregated by all required categories.	August 31, 2004	Actual reports that are disseminated and posted on the website	Title I Office Assessment Office	Title VI
Document that the state provides individual information from the State assessment showing how well each student has performed relative to the content and performance standards.	August 31, 2004	Actual reports that are disseminated	Title I Office Assessment Office	Title VI
Document that LEAs publicize and disseminate the profiles to all the required audiences in a language and format that is understandable to all to the extent practicable.	August 31, 2004	Actual Profiles disseminated by LEAs	Title I Office Assessment Office	Title VI

Description of the state's monitoring process to ensure the quality of all reports.	September 30, 2004	Actual Monitoring document	Title I Office Assessment Office	Title VI
Submit manuals and/or guidelines on the interpretation of these reports with the entire assessment system for peer review.	October 31, 2004	Actual Manuals or Guidelines	Title I Office Assessment Office	Title VI

REQUIREMENT 6 - Meet requirements under the No Child Left Behind Act related to assessments and accountability. [NCLB assessment and accountability requirements]

NOTE: Montana will need to modify the contents of reports temporarily until all required assessment components are implemented.

Action Steps for Requirement 6 These action steps are goals to be accomplished by the date shown. Montana, and other Compliance agreement States, will have until 6 months from the date of the agreement or 30 days after publication of final regulations (whichever comes first) to determine the specific tasks and dates required to satisfy each goal.	Completion Date	Documentation	Office Responsible	Fiscal Resources

Content standards in science: *Completed for grades 4, 8, and 11 and adopted by State Board of Education*	October 1999	Administrative Rules of Montana	Accreditation office	State
Develop standards-based assessments reading and math in remaining grades 3, 5, 6, and 7 Complete alignment study of purchased criterion-referenced test Draft & field test items Pilot assessments in the grades not tested in 2004 Full Administration of reading and math in grades 3,5,6, and 7 (along with grades 4, 8, and 11)	November 30, 2003 April 30, 2004 April 30, 2005 April 30, 2006	Report of alignment Field test data Pilot administration manual Schedule for testing; tests given as scheduled	Title I Office Assessment Office	Title VI
Dissemination of disaggregated data at the school and district levels from the assessments currently in use. Assessment reports to include: gender, major racial/ethnic groups, English proficiency status, migrant status, students with disabilities as compared to nondisabled students, and economically	Aug 31, 2002 (as available) Aug 31, 2003 (all subgroups) AND Annually thereafter	Reports based on ITBS/ITED tests administered in 2001-02.	Title I Office Assessment Office Measurement and Accountability Office	Title VI

disadvantaged students as compared to students who are not economically disadvantaged.				
Distribution of an itemized score analysis to support instructional improvement.	Aug 31, 2003 AND Annually thereafter	Sample report based on test administered in 2001-02	Title I Office Assessment Office Measurement and Accountability Office	Title VI
Implementation of the English language proficiency testing required under Title I and Title III • Identify test(s) that will be used • Administer to all LEP students • Define annual measurable objectives for gains in English proficiency as required in Sec. 3122 • Report results as required by NCLB	2002-03 AND Annually thereafter	Instructions to districts and schools, test administration manuals, sample reports	Title I Office Assessment Office Title III Office	Title VI; Title III
Participation in the National Assessment of Educational Progress in 2003 and 2005 and, if selected, participation in the field test in off-years	May 28, 2002	Documented in Consolidated Application	Assessment office	ED/NAEP

Distribution of a state report card as required under Section 1111 of Title I. State report card must include the following assessment components by dates shown • Disaggregated student achievement results by performance level by Sept 30, 2002 • Percent of students not tested, disaggregated by Aug 31, 2003 • Comparison between annual objectives and actual performance for each student group by Aug 31, 2004 All other report card requirements must be met as quickly as possible, consistent with implementation of final assessments.	See deadlines for each item	Copy of state report card Copy of state report card Copy of state report card	Title I Office Assessment Office Measurement and Accountability Office	Title VI
A. Continued identification of schools in need of improvement, based on data from the current assessment(s) for all children in the grades assessed and, to also include: • Performance of subgroups (of statistically reliable size) • Application of the 95%	Sept 30, 2002 (as available) Aug 31, 2003	Description of school accountability system, to include the data source (assessments) and formula or decision sequence used to	Title I Office Measurement and Accountability Office	Title I; Title VI

participation rule • HS graduation and the other indicators required by NCLB,		determine school classifications. List of schools & districts identified for improvement		
B. Establish AYP baseline, based on data from the new assessment(s) for all children in the grades assessed Use transitional rules under NCLB, Sec. 1116 to identify schools in need of improvement	Aug 31, 2004	Communication of baseline values and AYP design to schools and districts List of schools & districts identified for improvement	Title I Office Measurement and Accountability Office Assessment Office Accreditation Office	Title I; Title VI; State
Annual report to the Secretary as described in Section 1111(h)(4) • Information on State progress in developing all required academic assessments (2002-03) • Student achievement data, disaggregated (2002-03) • Data on acquisition of English proficiency by LEP (2002-03) • Number and names of schools identified for school improvement, the reason for identification, and measures taken to address achievement problems • Number of students and schools	Aug 2002 and annually thereafter	Data will be reported as part of the Annual Title I Performance Report	Title I Office Measurement and Accountability Office Assessment Office	Title I; Title VI; State

that participated in public school choice and supplemental services • Information on quality of teachers and percent of classes taught by highly qualified (2002-03)				
All other requirements of NCLB pertaining to schools identified for improvement, corrective action, or restructuring during the period of the compliance agreement	2002-03	Implementation and documentation of choice, supplemental services, corrective actions, as appropriate	Title I Office	Title I; Title VI; State

[FR Doc. 03–6949 Filed 3–21–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

National Nuclear Security Administration, Los Alamos Site Office; Floodplain Statement of Findings for the Fire Road Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Los Alamos Site Office, Department of Energy.

ACTION: Floodplain Statement of Findings.

SUMMARY: This Floodplain Statement of Findings is for the construction of improvements to existing firebreaks and access roads into remote forested areas at Los Alamos National Laboratory (LANL) for the purpose of providing reliable access for fire fighting crews. The improvements will focus on changes to drainage crossings and improved roadbeds within floodplain areas. Improvements would be minor and would mostly consist of installing culverts and stabilizing roadbeds. These roads are limited use roads that are restricted to official access only. In accordance with 10 CFR part 1022, NNSA has prepared a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withers, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–8690, facsimile (505) 667–9998; or electronic address: *ewithers@doeal.gov.* For further information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: After the May 2000 Cerro Grande Fire event, NNSA developed a Wildfire Hazard Reduction Program for LANL. This program includes the improvement of firebreaks (also known as ''fuel brakes'') and fire roads for access to remote portions of LANL through the upgrade and maintenance of the existing fire road network. There are about 12 firebreaks and 40 fire roads at LANL that will be improved as part of this project (*see* the attached figure). These improvements will require the following: (1) Clearing each road of hazard trees (mostly these are dead or dying trees) to keep the road open and passable; (2) grading of the roads and realignment of sharp curves to improve drainage; (3) cut and fill of road areas where needed to accommodate heavy fire fighting equipment; and (4) installation of culverts only in areas where the substrate is unstable, so as to minimize the number of culverts requiring maintenance. Disturbed soil will be revegetated after work is completed. Firebreak and road improvements will commence in fiscal year 2003 and be completed over the next 9 months.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), NNSA prepared a floodplain/wetland assessment for this action. The NNSA published a Notice of Floodplain Involvement (volume 68, number 39). This notice announced that the floodplain/wetland assessment document was available for a 15-day review period at two public DOE reading rooms in Los Alamos and Albuquerque, New Mexico, and that copies of the document could be obtained by contacting Ms. Withers at the above address. No comments were received from the **Federal Register** notice on the proposed floodplain action.

Project Description: Implementing the proposed improvements to firebreaks and fire roads would allow the passage of emergency fire fighting vehicles into remote portions of LANL. Each road would be graded and drainage crossings would be improved. All of the drainage crossings on the roads in the project area receive intermittent flow during seasonal storms and spring runoff.

Hazard trees that impede emergency vehicle passage would first be removed. Drainages would be graded to existing channel depth or crossed with a culvert. Most of the drainages are composed of hard substrate, and would not need a culvert. Where the substrate is soft and unstable and where the channel is much deeper than the roadbed, a culvert would be installed. Because of the high maintenance costs associated with culvert crossings, this method of drainage improvement would be limited to the extent practicable.

All roads would be stabilized with drainage improvements. At appropriate locations, water bars and off-drains would be constructed in the improved road. Each of these drainage features would be stabilized with rock or erosion matting to prevent erosion. They would be built to temporarily impede flow without impounding water. This would reduce erosion and sediment transport into the streams. Steep slopes created by the road improvements would be rehabilitated using revegetation, soil stabilization mats, hydro mulching, and other soil stabilization methods, as appropriate. Fuel breaks would be treated the same as fire roads.

Alternatives: Alternative methods were considered for constructing improvements to the firebreaks and fire roads at LANL. A combination of methods were selected that would minimize the environmental impacts and be the least disruptive to existing environmental resources in the area.

Floodplain Impacts: The proposed action would have the potential for minimal impacts to the floodplain. Possible impacts of the proposed project on the floodplains would include movement or ponding of water within the project area and the subsequent displacement of sediment; however, these improvements are anticipated to improve existing conditions in the floodplain by correcting erosion problems with road crossings. Should a rain event occur during this activity, there may be some sediment movement down canyon because of the loosened condition of the soil from the clearing and construction activities.

Floodplain Mitigation: Impacts to the floodplain would be minimized by following Best Management Practices at the construction area (such as the placement of silt fences, straw bales or wattles, or wooden or rock structures to slow down water runoff and run-on at cleared sites). Post-construction reseeding and re-vegetation along the sides of the stream channel will minimize soil disturbance and reduce or prevent the potential for soil erosion. Specific local mitigation actions for each fire road are described in section 6.1 of the floodplain/wetland assessment.

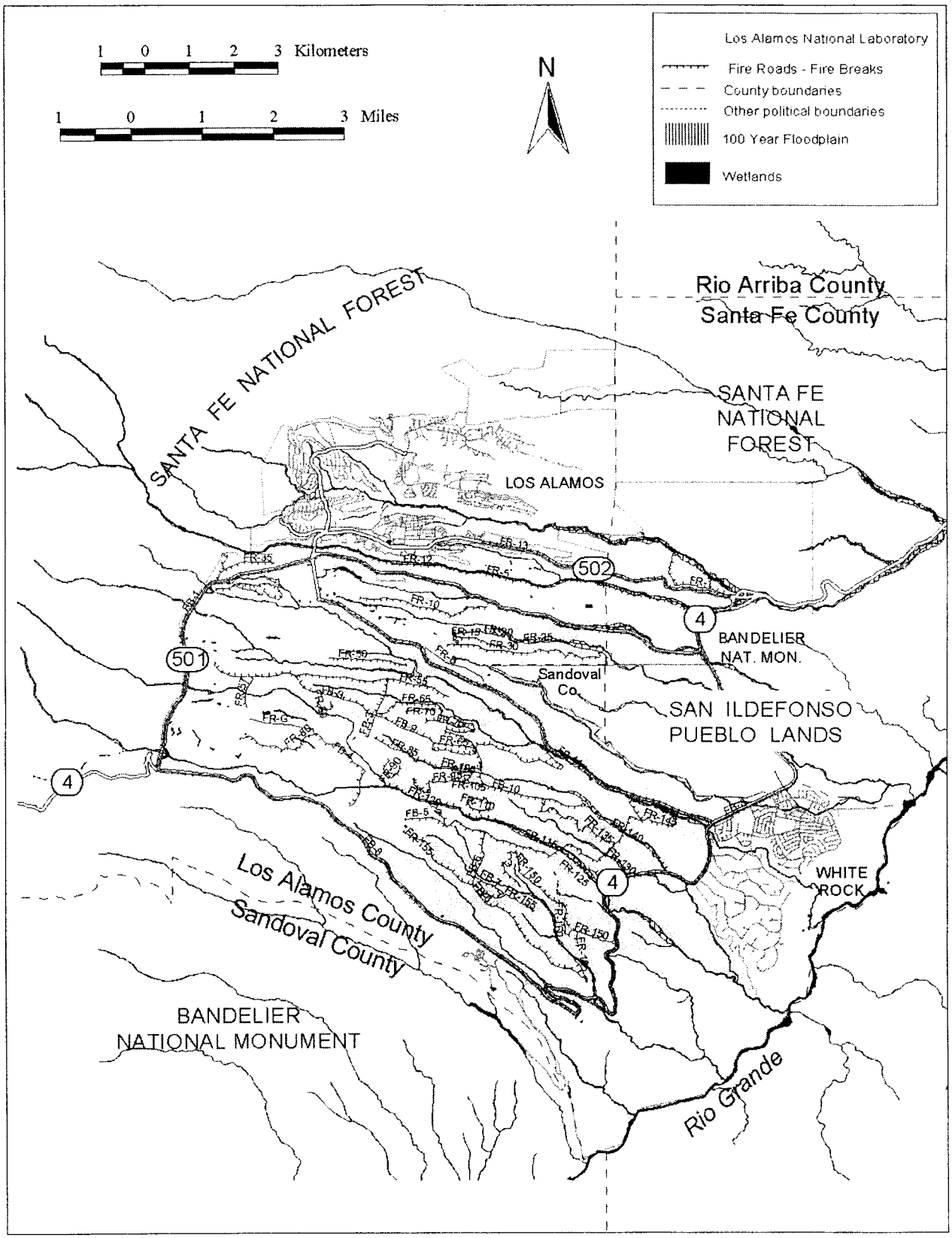
No debris will be left at the work site. No vehicle maintenance or fueling would occur within 100 feet of the stream channel. Any sediment movement from the site would be short term and temporary.

Issued in Los Alamos, NM on March 17, 2003.

Ralph E. Erickson,

Manager, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

BILLING CODE 6910–01–P



Fire Roads Project -- Floodplains and wetlands at LANL

[FR Doc. 03–6910 Filed 3–21–03; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–68–000, et al.]

Reliant Resources, Inc., et al.; Electric Rate and Corporate Filings

March 17, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Resources, Inc., Reliant Energy Choctaw County, LLC, Reliant Energy Hunterstown, LLC

[Docket No. EC03–68–000]

Take notice that on March 14, 2003, Reliant Resources, Inc. (RRI), Reliant Energy Choctaw County, LLC (Reliant Choctaw), and Reliant Energy Hunterstown, LLC (Reliant Hunterstown) (collectively, Applicants), filed with the Federal Energy Regulatory Commission a joint application pursuant to section 203 of the Federal Power Act for authorization on an expedited basis of authority to change control and transfer ownership of jurisdictional facilities to RRI or to any direct or indirect wholly-owned subsidiary of RRI, including Reliant Hunterstown and/or Reliant Choctaw. Applicants state that they require the requested authorization in order to finalize the restructuring of RRI's debt. Applicants, therefore, request a shortened notice period and expedited Commission approval within 14 days of filing in order to achieve closing of the proposed transaction on or before March 28, 2003.

Comment Date: March 24, 2003.

2. Arizona Public Service Company

[Docket No. ER03–347–001]

Take notice that on March 13, 2003, Arizona Public Service Company (APS) tendered for filing a re-conformed copy of the Long-Term Power Transactions Agreement with PacifiCorp (PAC) applicable under the APS–FERC Rate Schedule No. 182 in compliance with the Commission's Order in Docket No. ER03–347–000.

APS states that a copy of this filing has been served on PAC.

Comment Date: April 3, 2003.

3. Brookhaven Energy Limited Partnership

[Docket No. ER03–597–001]

Take notice that on March 11, 2003, Brookhaven Energy Limited Partnership (Brookhaven Energy), filed with the Federal Energy Regulatory Commission an amended Market-Based Tariff in the above-referenced proceeding.

Comment Date: April 2, 2003.

4. Southern California Edison Company

[Docket No. ER03–609–000]

Take notice that on March 12, 2003, Southern California Edison Company, (SCE), tendered for filing a Notice of Cancellation of the Service Agreement for Wholesale Distribution Service between SCE and Riverside Canal Power Company. SCE request an effective date of March 1, 2003.

SCE also states that copies of the proposed cancellation has been served to the Public Utilities Commission of the State of California, and Riverside Canal Power Company.

Comment Date: April 2, 2003.

5. Allegheny Energy Supply Units 3, 4 & 5, LLC

[Docket No. ER03–610–000]

Take notice that on March 12, 2003, Allegheny Energy Supply Units 3, 4 & 5, LLC (Allegheny 3, 4 & 5) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price. Allegheny 3, 4 & 5 requests an effective date of one day after filing on March 13, 2003.

Comment Date: April 2, 2003.

6. Riverview Energy Center, LLC

[Docket No. ER03–611–000]

Take notice that on March 12, 2003, Riverview Energy Center, LLC tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: April 2, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER03–613–000]

Take notice that on March 12, 2003, PJM Interconnection, L.L.C. (PJM), submitted to the Federal Energy Regulatory Commission (Commission) amendments to Schedule 2 of the PJM Open Access Transmission Tariff (PJM Tariff) to include Liberty Electric Power, LLC (Liberty) and Armstrong Energy Limited Partnership, LLLP (Armstrong) revenue requirements for Reactive Supply and Voltage Control from General Sources Service that the Commission accepted for filing in Docket Nos. ER03–88–000, ER03–88–001 and ER03–229–000.

Consistent with the effective dates of the Commission's acceptance of Liberty's revenue requirements in Docket Nos. ER03–88–000 and ER03–88–001, PJM requests an effective date of January 1, 2003, for the Sixth Revised Sheet No. 112A of the PJM Tariff. In addition, consistent with the effective dates of the Commission's acceptance of Armstrong's revenue requirements in Docket No. ER03–229–000, PJM requests an effective date of February 1, 2003, for the Seventh Revised Sheet No. 112A of the PJM Tariff.

PJM states that copies of this filing have been served on all PJM members, Liberty, Armstrong, and each state electric utility regulatory commission in the PJM region.

Comment Date: April 2, 2003.

8. Southwest Power Pool, Inc.

[Docket No. ER03–614–000]

Take notice that on March 12, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed Letter Agreement between ExxonMobil Production Company and Southwestern Electric Power Company (the Company) (collectively, the Parties). The Letter Agreement provides for the performance of certain engineering, design and equipment specification and certification activities by the Company and the payment for such activities by ExxonMobil Production Company relating to the proposed interconnection of a generating facility to be constructed by ExxonMobil Production Company near the City of Hawkins, Texas with the Company's transmission facilities. SPP seeks an effective date of February 1, 2003, for this Letter Agreement.

Comment Date: April 2, 2003.

9. Entergy Services, Inc.

[Docket No. ER03–615–000]

Take notice that on March 13, 2003, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Gulf States and Borden Chemicals and Plastics Operating Limited Partnership, debtor-in-possession.

Comment Date: April 3, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6936 Filed 3–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–44–000, et al.]

Wharton County Power Partners, L.P., et al.; Electric Rate and Corporate Filings

March 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wharton County Power Partners, L.P.

[Docket No. EG03–44–000]

Take notice that on March 11, 2003, Wharton County Power Partners, L.P. (the Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

The Applicant is a Delaware limited partnership with its principal place of business at 1330 Lake Robbins Drive #350, The Woodlands, Texas 77380. The Applicant states that it intends to acquire, own and operate an 80 MW gas-fired electric generating facility located in Wharton County, Texas.

Comment Date: April 3, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–57–000]

Take notice that on March 11, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Request for the Waiver of Penalty Provisions of the Midwest ISO Open Access Transmission Tariff (OATT) for certain transactions occurring between the period of February 1, 2002, to March 31, 2003.

The Midwest ISO states that it has served copies of its filing on all affected customers. Midwest ISO states that it has also electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: April 10, 2003.

3. California Independent System Operator Corporation, Pacific Gas and Electric Company

[Docket Nos. ER02–250–003, ER02–527–002 and ER02–479–002]

Take notice that on March 10, 2003, the California Independent System Operator Corporation (ISO) tendered for filing a refund report in the above-identified dockets, as directed by the Commission's letter order dated December 26, 2002, and the subsequent notice granting an extension of time, issued on January 27, 2002. This filing replaces the refund report filed by ISO on March 7, 2003.

On March 12, 2003, ISO submitted a request for withdrawal of the refund report filed on March 7, 2003.

Comment Date: April 2, 2003.

4. California Power Exchange Corporation

[Docket No. ER03–139–004]

Take notice that on March 12, 2003, the California Power Exchange Corporation made a filing to comply with the Commission's February 25, 2003, order in this proceeding (102 FERC ¶ 61,208).

Comment Date: April 2, 2003.

5. Virginia Electric and Power Company

[Docket No. ER03–159–002]

Take notice that on March 12, 2003, Virginia Electric and Power Company, (Company) tendered for filing a request that the Federal Energy Regulatory Commission take action on the revised service agreement that the Company tendered for filing in Docket No. ER03–159–000 on November 5, 2002, as amended on November 13, 2002.

The Company states that copies of the filing were served upon the public utility's jurisdictional customers, Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: April 2, 2003.

6. San Diego Gas & Electric Company

[Docket No. ER03–418–001]

Take notice that on March 11, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission substitute tariff sheets in the above-referenced docket. The purpose of the filing is to make technical corrections to the tariff sheets submitted on January 15, 2003.

SDG&E states that copies of this filing were served on the parties listed on the Service List for Docket No. ER03–418–001.

Comment Date: April 1, 2003.

7. Progress Energy Service Company on behalf of Progress Energy Florida, Inc.

[Docket No. ER03–425–000]

Take notice that on March 12, 2003, Progress Energy Service Company, on behalf of Progress Energy Florida, Inc., hereby withdrew its filing in the above-captioned proceeding.

Progress Energy Service Company states that copies of the filing were served upon the counterparty to the filed agreement and the relevant state commissions.

Comment Date: April 2, 2003.

8. Progress Energy, Inc.

[Docket No. ER03–441–001]

Take notice that on February 6, 2003, Progress Energy, Inc., on behalf of

Carolina Power & Light Company, also known as Progress Energy Carolinas, Inc., (hereafter ''Progress Carolinas''), tendered for filing an amendment to its ''Notice of Withdrawal of Service Agreements'' filed on January 24, 2003, in Docket No. ER03–441–000.

Progress Carolinas state that copies of this filing were served on the affected customer and affected state regulatory commissions.

Comment Date: March 24, 2003.

9. Carolina Power & Light Company, Florida Power Corporation

[Docket No. ER03–540–002]

Take notice that on March 12, 2003, Carolina Power & Light Company (CP&L), and Florida Power Corporation (FPC), tendered for filing with the Federal Energy Regulatory Commission further modifications to the credit security provisions of their Open Access Transmission Tariffs. The proposed modifications supersede the filings made on February 14, 2003, and February 24, 2003, in the above-referenced docket.

CP&L and FPC respectfully request that the OATT modifications become effective on April 15, 2003, which is 60 days after their initial filing in this docket.

CP&L and FPC state that copies of the filing were served upon the public utility's jurisdictional customers, the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: April 2, 2003.

10. Duke Energy Corporation

[Docket No. ER03–604–000]

Take notice that on March 10, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a revised Service Agreement for Network Integration Transmission Service (NITSA) between Duke and North Carolina Electric Membership Corporation. Duke seeks an effective date for the revised NITSA of February 10, 2003.

Comment Date: March 31, 2003.

11. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER03–605–000]

Take notice that on March 10, 2003, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Termination of Service Agreement No. 10 under Wolverine's FERC Electric Tariff, Original Vol. No. 2 and a Notice of Termination of Service Agreement No. 1 under Wolverine's FERC Electric Tariff, First Revised Vol. No. 1. The Service Agreements expired by their own terms effective September 1, 2002. Wolverine requested an effective date of September 1, 2002, for both Service Agreements.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy Cooperative and the Michigan Public Service Commission.

Comment Date: March 31, 2003.

12. Wisconsin Public Service Corporation

[Docket No. ER03–606–000]

Take notice that, on March 10, 2003, Wisconsin Public Service Corporation (WPSC or the Company) tendered for filing an increase in wholesale rates under Section 205 of the Federal Power Act. This rates increase request applies to: WPSC's ''W–1A'' tariff and ''W–2A'' tariff customers who take full and partial requirements service, respectively; WPSC's Rate Schedule 51 service partial requirements service to the City of Marshfield; and to WPSC's customers who utilize the interruptible provisions of its rates. The proposed effective date of this increase is May 11, 2003.

WPSC states that a copy of the filing was served upon the affected customers and State Commissions.

Comment Date: March 31, 2003.

13. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER03–607–000]

Take notice that on March 10, 2003, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing an executed Facilities Agreement for Construction of a Wood-style Substation and Tap between Wolverine Power Supply Cooperative, Inc. and Great Lakes Energy Cooperative (Facilities Agreement). Wolverine requested an effective date of May 1, 2003, for the Facilities Agreement.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy Cooperative and the Michigan Public Service Commission.

Comment Date: March 31, 2003.

14. California Independent System Operator Corporation

[Docket No. ER03–608–000]

Take notice that on March 11, 2003, the California Independent System Operator Corporation (ISO) tendered for filing an amendment (Amendment No. 49) to the ISO Tariff.

With this amendment the ISO seeks to resolve a number of outstanding issues regarding the transmission Access Charge methodology set forth in Amendment No. 27 to the ISO Tariff, filed March 31, 2000. The ISO also seeks to address certain issues that have arisen in the implementation of that transmission Access Charge methodology. The ISO requests that Amendment No. 49 be made effective June 1, 2003.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including the City of Vernon, with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: April 1, 2003.

15. Mid-Continent Area Power Pool

[Docket Nos. OA97–163–014, ER97–1162–012 and OA97–658–013]

Take notice that on March 10, 2003, the Mid-Continent Area Power Pool (MAPP) tendered for filing a letter informing the Federal Energy Regulatory Commission that MAPP will implement additional procedures to provide firm redispatch service in Schedule F.

Comment Date: March 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The

Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6937 Filed 3–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 19, 2003.

The Following Notice of Meeting is Published Pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 26, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary Telephone (202) 502–8400, for a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

823rd Meeting—March 26, 2003, Regular Meeting 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters
A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Omitted
E–2.
Docket# ER03–453, 000, Allegheny Power System, Inc.
E–3.
Docket# ER03–454, 000, Southern Company Services, Inc.
E–4.
Docket# ER03–211, 000, Southern Company Services, Inc.
Other#s ER02–211, 001, Southern Company Services, Inc.
ER03–212, 000, Southern Company Services, Inc.
ER03–212, 001, Southern Company Services, Inc.
E–5.
Docket# ER03–458, 000, American Electric Power Service Corporation
E–6.
Docket# ER03–487, 000, Idaho Power Company
Other#s ER03–488, 000, Idaho Power Company
E–7.
Docket# ER03–303, 000, New York Independent System Operator, Inc.
Other#s ER03–303, 001, New York Independent System Operator, Inc.
E–8.
Docket# ER03–510, 000, Delta Energy Center, LLC
E–9.
Docket# ER03–449, 000, Sussex Rural Electric Cooperative
Other#s EL03–49, 000, Sussex Rural Electric Cooperative
E–10.
Docket# ER02–108, 008, Midwest Independent Transmission System Operator, Inc.
E–11.
Omitted
E–12.
Docket# EC03–47, 000, Dynegy Inc.
Other#s ES03–20, 000, Dynegy Inc.
ES03–20, 001, Dynegy Inc.
EC03–47, 001, Dynegy Inc.
E–13.
Omitted
E–14.
Docket# ER02–2568, 001, New England Power Company
E–15.
Docket# EL02–126, 000, City of Corona, California v. Southern California Edison Company
E–16.
Docket# EL03–50, 000, Powerex Corporation v. California Power Exchange Corporation
E–17.
Docket# EL00–95, 045, San Diego Gas & Electric Company
Other#s EL00–98, 042, Investigation of Practices of California Independent System Operator Corporation & California Power Exchange
E–18.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices
E–19.
Omitted
E–20.
Docket# ER02–871, 000, Midwest Independent Transmission System Operator, Inc.
E–21.
Docket# EL01–10, 000, Puget Sound Energy, Inc.
E–22.
Docket# EL00–95, 079, San Diego Gas & Electric Company
Other#s EL00–98, 067, Investigation of Practices of California Independent System Operator Corporation & California Power Exchange

Miscellaneous

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP00–241, 000, Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy Gas, L.P. and El Paso Merchant Energy Company
Other#s RP00–241, 006, Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy Gas, L.P. and El Paso Merchant Energy Company
RP00–241, 008, Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy Gas, L.P. and El Paso Merchant Energy Company
G–2.
Docket# RP00–336, 006, El Paso Natural Gas Company
Other#s RP00–139, 004, KN Marketing, L.P. v. El Paso Natural Gas Company
RP01–484, 002, Aera Energy, LLC, *et al.*, v. El Paso Natural Gas Company
RP01–486, 002, Texas, New Mexico and Arizona Shippers v. El Paso Natural Gas Company
G–3.
Docket# RP00–336, 010, El Paso Natural Gas Company
G–4.
Docket# RP98–206, 008, Atlanta Gas Light Company
G–5.
Docket# OR03–2, 000, Caesar Oil Pipeline Company, LLC
G–6.
Docket# OR03–3, 000, Proteus Oil Pipeline Company, LLC
G–7.
Docket# RP96–389, 076, Columbia Gulf Transmission Company
G–8.
Docket# RP03–267, 000, Northern Natural Gas Company
G–9.
Docket# RP03–262, 000, Natural Gas Pipeline Company of America
G–10.
Docket# RP03–284, 000, Williston Basin Interstate Pipeline Company
G–11.
Docket# RP03–286, 000, Williston Basin Interstate Pipeline Company
Other#s RP03–286, 001, Williston Basin Interstate Pipeline Company
G–12.
Docket# RP03–275, 000, Northern Border Pipeline Company
G–13.
Docket# RP03–256, 000, Honeoye Storage Corporation
Other#s RP03–256, 001, Honeoye Storage Corporation
G–14.
Docket# RP03–278, 000, Panhandle Eastern Pipe Line Company
G–15.
Docket# RP03–258, 000, Iroquois Gas Transmission System, L.P.
Other#s RP03–258, 001, Iroquois Gas Transmission System, L.P.
G–16.
Omitted

G–17.
Docket# RP03–272, 000, Northwest Pipeline Corporation
G–18.
Omitted
G–19.
Docket# RP03–279, 000, Panhandle Eastern Pipe Line Company
G–20.
Omitted
G–21.
Docket# RP03–285, 000, TransColorado Gas Transmission Company
G–22.
Docket# GP99–15, 001, Burlington Resources Oil & Gas Company
Other#s RP98–39, 026, Northern Natural Gas Company
SA98–101, 001, Continental Energy
G–23.
Docket# RP98–40, 031, Panhandle Eastern Pipe Line Company
Other#s GP98–6, 003, Anadarko Petroleum Corporation
GP98–7, 003, OXY USA, Inc.
GP98–27, 001, Oneok Exploration Co.
GP98–32, 002, Anadarko Producton Co.
SA98–100, 001, Partnership Properties Co., a/k/a IMC Global, Inc.
SA99–1, 001, Burlington Resources Oil and Gas Co., LP
SA99–7, 001, Charlotte Hill Gas Co.
G–24.
Docket#s RP98–52, 045, Southern Star Central Gas Pipeline, Inc.
Other#s, GP98–3, 004, OXY USA, Inc.
GP98–4, 004, Amoco Production Company
GP98–13, 004, ExxonMobil Oil Corporation
GP98–16, 004, Union Pacific Resources Inc.
SA98–33, 001, Pioneer Natural Resources USA, Inc.
G–25.
Docket# RP98–54, 036, Colorado Interstate Gas Company
Other#s RP98–54, 037, Colorado Interstate Gas Company
G–26.
Docket# RP03–7, 000, Natural Gas Pipeline Company of America
Other#s RP03–7, 001, Natural Gas Pipeline Company of America
G–27.
Docket# RP03–280, 000, Columbia Gas Transmission Corporation
G–28.
Docket# RP03–281, 000, Columbia Gas Transmission Corporation
G–29.
Docket# RP03–292, 000, Viking Gas Transmission Company

Energy Projects—Hydro

H–1.
Omitted
H–2.
Omitted
H–3.
Docket# P–2395, 020, Wisconsin Department of Natural Resources v. Flambeau Hydro, L.L.C.
Other#s P–2421, 020, Wisconsin Department of Natural Resources v. Flambeau Hydro, LLC.
P–2473, 019, Wisconsin Department of Natural Resources v. Flambeau Hydro, Inc.
P–2640, 027, Wisconsin Department of Natural Resources v. Flambeau Hydro, LLC

Energy Projects—Certificates

C–1.
Docket# CP03–1, 000, El Paso Natural Gas Company
C–2.
Docket# CP02–396, 001, Greenbrier Pipeline Company, LLC
Other#s CP02–396, 000, Greenbrier Pipeline Company, LLC
CP02–397, 000, Greenbrier Pipeline Company, LLC
CP02–397, 001, Greenbrier Pipeline Company, LLC
CP02–398, 000, Greenbrier Pipeline Company, LLC
CP02–398, 001, Greenbrier Pipeline Company, LLC
C–3.
Docket# CP03–2, 000, Energy West Development, Inc.
Other#s CP03–3, 000, Energy West Development, Inc.
CP03–4, 000, Energy West Development, Inc.
C–4.
Docket# CP03–12, 000, Egan Hub Partners, L.P.
C–5.
Docket# CP03–11, 000, Jupiter Energy Corporation
C–6.
Docket# CP02–116, 001, Tennessee Gas Pipeline Company
C–6.
Other#s CP02–117, 001, Tennessee Gas Pipeline Company

Magalie R. Salas,
Secretary.
[FR Doc. 03–7111 Filed 3–20–03; 4:01 pm]
BILLING CODE 6717–01–U

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATES: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 28, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—February 19, 2003 (open and closed).

B. Reports

—OFI lending issues.
—Establishment of system institutions as cooperatives.
—Strategic Plan—First Quarter Goal Status Report.

C. New Business—Regulations

—Capital/technical amendments—final rule.

Closed Session*

Reports

—Examination issues.
—Examination issues.

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8).

Dated: March 20, 2003.

Jeanette C. Brinkley,
Secretary, Farm Credit Administration Board.
[FR Doc. 03–7034 Filed 3–20–03; 1:12 pm]
BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

Type of Review: Renewal of a currently approved collection.

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Annual Burden:

Estimated annual number of respondents: 4,732.
Estimated time per response: 27.91 hours.
Estimated total annual burden hours: 132,070 hours.
Expiration Date of OMB Clearance: April 30, 2003.

SUPPLEMENTARY INFORMATION: The information collection requirements are contained in 12 CFR 344. The regulation's purpose is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate information concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before April 21, 2003 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: March 18, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–6938 Filed 3–21–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

[File No. 021 0115]

Indiana Household Movers and Warehousemen, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 16, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Dana Abrahamsen, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2906.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 18, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/03/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with Indiana Household Movers and Warehousemen, Inc. (''IHM&W'' or ''Respondent''). The Agreement is for settlement purposes only and does not constitute an admission by IHM&W that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Commission's Complaint

The proposed Complaint alleges that Respondent Indiana Household Movers and Warehousemen, Inc., a corporation, has violated and is now violating section 5 of the Federal Trade Commission Act. Specifically, the proposed Complaint alleges that Respondent has agreed to engage, and has engaged, in a combination and conspiracy, an agreement, concerted action or unfair and unlawful acts, policies and practices, the purpose or effect of which is to unlawfully hinder, restrain, restrict, suppress or eliminate competition among household goods movers in the household goods moving industry.

Respondent is an association organized for and serving its members, which are approximately 70 household goods movers that conduct business within the State of Indiana. One of the primary functions of Respondent is preparing, and filing with the Indiana Department of Revenue, tariffs and supplements on behalf of its members. These tariffs and supplements contain rates and charges for the intrastate and local transportation of household goods and for related services.

The proposed Complaint alleges that Respondent is engaged in initiating, preparing, developing, disseminating, and taking other actions to establish and maintain collective rates, which have the purpose or effect of fixing, establishing or stabilizing rates for the transportation of household goods in the State of Indiana. The Respondent files uniform rates that are agreed upon by all of its members.

The proposed Complaint further alleges that Respondent organizes and conducts meetings that provide a forum for discussion or agreement between competing carriers concerning or affecting rates and charges for the intrastate transportation of household goods.

The proposed Complaint further alleges that Respondent's conduct is anticompetitive because it has the effect of raising, fixing, and stabilizing the prices of household goods moves. The acts of Respondent also have the effect of depriving consumers of the benefits of competition.

II. Terms of the Proposed Consent Order

The proposed Order would provide relief for the alleged anticompetitive effects of the conduct principally by means of a cease and desist order barring Respondent from continuing its practice of filing tariffs containing collective intrastate rates.

Paragraph II of the proposed Order bars Respondent from filing a tariff that contains collective intrastate rates. This provision will terminate Respondent's current practice of filing tariffs that contain intrastate rates that are the product of an agreement among movers in the State of Indiana. This paragraph also prohibits Respondent from engaging in activities such as exchanges of information that would facilitate member movers in agreeing on the rates contained in their intrastate tariffs. It also bars Respondent from maintaining a tariff committee or agreeing with movers to institute any automatic intrastate rate increases.

Paragraph III of the proposed Order requires Respondent to cancel all tariffs that it has filed that contain intrastate collective rates. This provision will ensure that the collective intrastate rates now on file in the State of Indiana will no longer be in force, allowing for competitive rates in future individual mover tariffs. Paragraph III of the proposed Order also requires Respondent to cancel any provisions in its governing documents that permit it to engage in activities barred by the Order.

Paragraph IV of the proposed Order requires Respondent to send to its members a letter explaining the terms of the Order. This will make clear to members that they can no longer engage in collective rate-making activities.

Paragraphs V and VI of the proposed Order require Respondent to inform the Commission of any change in Respondent that could affect compliance with the Order and to file compliance reports with the Commission for a number of years. Paragraph VII of the proposed Order states that the Order will terminate in twenty years.

III. Opportunity for Modification of the Order

Respondent can seek to modify the proposed Order to permit it to engage in collective rate-making if it can demonstrate that the ''state action'' defense would immunize its conduct.[1] The state action doctrine dates back to the Supreme Court's 1943 opinion in *Parker* v. *Brown*, which held that, in light of the States' status as sovereigns, and given basic principles of federalism, Congress would not have intended the Sherman Act to apply to the activities of States themselves.[2] The defense also has been interpreted in limited circumstances to immunize from antitrust scrutiny private firms' activities that are conducted pursuant to state authority. States may not, however, simply authorize private parties to violate the antitrust laws.[3] Instead, a State must substitute its own control for that of the market.

Thus, the state action defense would be available to Respondent only if it could demonstrate that its conduct satisfied the strict two-pronged standard the Supreme Court set out in *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*: ''the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy''' and ''the policy must be 'actively supervised' by the state itself.''[4]

Under the first prong of *Midcal's* two-part test, Respondent would be required to show that the State of Indiana had ''clearly articulated and affirmatively expressed as state policy'' the desire to replace competition with a regulatory scheme. With regard to this prong, it appears that Indiana law specifically contemplates common carriers' entering into ''joint rates'' under certain circumstances that do not appear to be applicable to the conduct at issue here.[5] Respondent would meet its burden only if it could show that this or some other provision of Indiana law constitutes a clear expression of state policy to displace competition and allow for collective rate-making among competitors.

Under the second prong of the *Midcal* test, Respondent would be required to demonstrate ''active supervision'' by state officials. The Supreme Court has made clear that the active supervision standard is a rigorous one. It is not enough that the State grants general authority for certain business conduct or that it approves private agreements with little review. As the Court held in *Midcal*, ''The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.''[6] Rather, active supervision is designed to ensure that a private party's anticompetitive action is shielded from antitrust liability only when ''the State has effectively made [the challenged] conduct its own.''[7]

In order for state supervision to be adequate for state action purposes, state officials must engage in a ''pointed re-examination'' of the private conduct.[8] In this regard, the State must ''*have and exercise* ultimate authority'' over the challenged anticompetitive conduct.[9] To do so, state officials must exercise ''sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties.''[10] One asserting the state action defense must demonstrate that the state agency has ascertained the relevant facts, examined the substantive merits of the private action, assessed whether that private action comports with the underlying statutory criteria established by the state legislature, and squarely ruled on the merits of the private action in a way sufficient to establish the challenged conduct as a product of deliberate state intervention rather than private choice.

[1] 16 CFR 2.51. Because of this possibility, and because the issues raised by this case frequently arise, it is appropriate to address the state action defense in some detail.

[2] 317 U.S. 341 (1943).

[3] *Parker* v. *Brown*, 317 U.S. 341, 351 (1943) (''[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or declaring that their action is lawful.'').

[4] 445 U.S. 97, 105 (1980) (''Midcal'') (quoting *City of Lafayette* v. *Louisiana Power & Light*, 435 U.S. 389, at 410 (1978)). The ''restraint'' in this instance is the collective rate-setting. This articulation of the state action doctrine was reaffirmed by the Supreme Court in *FTC* v. *Ticor Title Insurance Co. (''Ticor'')*, where the Court noted that the gravity of the antitrust violation of price fixing requires exceptionally clear evidence of the State's decision to supplant competition. 504 U.S. 621, 633 (1992).

[5] *See* Ind. Code Ann. § 8–2.1–22–18(a) (Michie 2001). The state administrative code defines ''joint rate'' to mean ''a rate that applies over the lines or routes of two or more carriers and that is made by arrangement or agreement between such carriers.'' 45 IAC 16–3–2(3). This definition suggests that the term ''joint rate'' refers only to situations where more than one carrier is used to perform a single move rather than to situations where competing movers file collective rates.

[6] *Midcal*, 445 U.S. at 105–06.

[7] *Patrick* v. *Burget*, 486 U.S. 94, 106 (1988).

[8] *Midcal*, 445 U.S. at 106. Accord, Ticor, 504 U.S. at 634–35; *Patrick* v. *Burget*, 486 U.S. 94, 100–01 (1988).

[9] *Patrick* v. *Burget*, 486 U.S. at 101 (emphases added).

[10] *Ticor*, 504 U.S. at 634–35.

IV. General Characteristics of Active Supervision

At its core, the active supervision requirement serves to identify those responsible for public policy decisions. The clear articulation requirement ensures that, if a State is to displace national competition norms, it must replace them with specific state regulatory standards; a State may not simply authorize private parties to disregard federal laws,[11] but must genuinely substitute an alternative state policy. The active supervision requirement, in turn, ensures that responsibility for the ultimate conduct can properly be laid on the State itself, and not merely on the private actors. As the Court explained in *Ticor:*

> States must accept political responsibility for actions they intend to undertake. * * * Federalism serves to assign political responsibility, not to obscure it. * * * For states which do choose to displace the free market with regulation, our insistence on real compliance with both parts of the Midcal test will serve to make clear that the State is responsible for the price fixing it has sanctioned and undertaken to control.[12]

Through the active supervision requirement, the Court is furthering the fundamental principle of ''accountability'' that underlies federalism, by ensuring that, if allowing anticompetitive conduct proves to be unpopular with a State's citizens, the state legislators will not be ''insulated from the electoral ramifications of their decisions.'' [13]

In short, clear articulation requires that a State enunciate an affirmative intent to displace competition and to replace it with a stated criterion. Active supervision requires the State to examine individual private conduct, pursuant to that regulatory regime, to ensure that it comports with that stated criterion. Only then can the underlying conduct accurately be deemed that of the State itself, and political responsibility for the conduct fairly be placed with the State.

Accordingly, under the Supreme Court's precedents, to provide meaningful active supervision, a State must (1) Obtain sufficient information to determine the actual character of the private conduct at issue, (2) measure that conduct against the legislature's stated policy criteria, and (3) come to a clear decision that the private conduct satisfies those criteria, so as to make the final decision that of the State itself.

[11] Parker, 317 U.S. at 351.

[12] 504 U.S. at 636.

[13] See *New York* v. *United States*, 505 U.S. 144, 168–69 (1992).

V. Standard for Active Supervision

There is no single procedural or substantive standard that the Supreme Court has held a State must adopt in order to meet the active supervision standard. Satisfying the Supreme Court's general standard for active supervision, described above, is and will remain the ultimate test for that element of state action immunity.

Nevertheless, in light of the foregoing principles, the Commission in this Analysis identifies the specific elements of an active supervision regime that it will consider in determining whether the active supervision prong of state action is met in future cases (as well as in any future action brought by Respondent to modify the terms of this proposed Order). They are three: (1) The development of an adequate factual record, including notice and opportunity to be heard; (2) a written decision on the merits; and (3) a specific assessment—both qualitative and quantitative—of how the private action comports with the substantive standards established by the state legislature. All three elements further the central purpose of the active supervision prong by ensuring that responsibility for the private conduct is fairly attributed to the State. Each will be discussed below.

A. Development of an Adequate Factual Record, Including Notice and Opportunity To Be Heard

To meet the test for active state supervision, in this case Respondent would need to show that the State had in place an administrative body charged with the necessary review of filed tariffs and capable of developing an adequate factual record to do so.[14] In *Ticor*, the Court quoted language from earlier lower court cases setting out a list of organizational and procedural characteristics relevant as the ''beginning point'' of an effective state program:

> [T]he state's program is in place, is staffed and funded, grants to the state officials ample power and the duty to regulate pursuant to declared standards of state policy, is enforceable in the state's courts, and demonstrates some basic level of activity directed towards seeing that the private actors carry out the state's policy and not simply their own policy * * *.[15]

Moreover, that body would need to be capable of compiling, and actually compile, an adequate factual record to assess the nature of and impact of the private conduct in question. The precise factual record that would be required would depend on the substantive norm that the State has provided; the critical question is whether the record has sufficient facts for the reviewing body sensibly to determine that the State's substantive regulatory requirements have been achieved. In the typical case in which the State has articulated a criterion of consumer impact, obtaining reliable, timely, and complete economic data would be central to the board's ability to determine if the State's chosen criterion has been satisfied.[16] Timeliness in particular is an ongoing concern; if the private conduct is to remain in place for an extended period of time, then periodic state reviews of that private conduct using current economic data are important to ensure that the restraint remains that of the State, and not of the private actors.

Additionally, in assembling an adequate factual record, the procedural value of notice and opportunity to comment is well established. These procedural elements, which have evolved in various contexts through common law, through state and federal constitutional law, and through Administrative Procedure Act rulemakings,[17] are powerful engines for ensuring that relevant facts—especially those facts that might tend to contradict the proponent's contentions—are brought to the state decision-maker's attention.

B. A Written Decision

A second important element the Commission will look to in determining whether there has been active supervision is whether the state board renders its decision in writing. Though not essential, the existence of a written decision is normally the clearest indication that the board (1) genuinely has assessed whether the private

[14] At the time of any request for a modification, Respondent will be required to produce evidence of what the state reviewing agency is likely to do in response to collective rate-making. We recognize that this involves some prediction and uncertainty, particularly when the Respondent requests an order modification on the basis of a state review program that might be authorized but not yet operating, as the Respondent will still be under order. In such cases it may be appropriate for the Respondent to show what the state program is designed, directed, or organized to do. If a particular state agency is already conducting reviews in some related area, evidence of its approach to these tasks will be particularly relevant.

[15] *Ticor*, 504 U.S. at 637 (citations omitted).

[16] As the *Ticor* Court held, ''state officials [must] have undertaken the necessary steps to determine the specifics of the price-fixing or ratesetting scheme.'' Id. at 638.

[17] The Administrative Procedure Act defines a rule, in part, as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4). Actions ''concerned with the approval of 'tariffs' or rate schedules filed by public utilities and common carriers'' are typical examples of rulemaking proceedings. E. Gellhorn & R. Levin, Administrative Law & Process 300 (1997).

conduct satisfies the legislature's stated standards and (2) has directly taken responsibility for that determination. Through a written decision, whether rejecting or (the more critical context) approving particular private conduct that would otherwise violate the federal antitrust laws, the state board would provide analysis and reasoning, and supporting evidence, that the private conduct furthers the legislature's objectives.[18]

C. Qualitative and Quantitative Compliance With State Policy Objectives

In determining active supervision, the substance of the State's decision is critical. Its fundamental purpose must be to determine that the private conduct meets the state legislature's stated criteria. Federal antitrust law does not seek to impose federal substantive standards on state decision-making, but it does require that the States—in displacing federal law—meet their own stated standards. As the Ticor Court explained:

> Our decisions make clear that the purpose of the active supervision inquiry is not to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices. Its purpose is to determine whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties. Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy. The question is not how well state regulation works but whether the anticompetitive scheme is the State's own.[19]

Thus, a decision by a state board that assesses both qualitatively and quantitatively whether the ''details of the rates or prices'' satisfy the state criteria ensures that it is the State, and not the private parties, that determines the substantive policy. There should be evidence of the steps the State took in analyzing the rates filed and the criterion it used in evaluating those rates. There should also be evidence showing whether the State independently verified the accuracy of financial data submitted and whether it relied on accurate and representative samples of data. There should be evidence that the State has a thorough understanding of the consequences of the private parties' proposed action. Tariffs, for instance, can be complex, and there should be evidence that the State not only has analyzed the actual rates charged but also has analyzed the complex rules that may directly or indirectly impact the rates contained in the tariff.

If the State has chosen to include in its statute a requirement that the regulatory body evaluate the impact of particular conduct on ''competition,'' or ''consumer welfare,'' or some similar criteria, then—to meet the standard for active supervision—there should be evidence that the State has closely and carefully examined the likely impact of the conduct on consumers. Because the central purpose of the federal antitrust laws is also to protect competition and consumer welfare,[20] conduct that would run counter to those federal laws should not be lightly assumed to be consistent with parallel state goals. Especially when, as here, the underlying private conduct alleged is price fixing—which, as the Ticor Court noted, is possibly the most ''pernicious'' antitrust offense [21]—a careful consideration of the specific monetary impact on consumers is critical to any assessment of an overall impact on consumer welfare. That consideration, to the maximum extent practicable, should include an express quantitative assessment, based on reliable economic data, of the specific likely impact upon consumers.

It bears emphasizing that States need not choose to enact criteria such as promoting ''competition'' or ''consumer welfare''—the central end of federal antitrust law. A State could instead enact a criterion such as maximizing the profits of members of a particular industry. Then, the State's decision would need to assess whether that objective had been met.

On the other hand, if a State does not disavow (either expressly or through the promulgation of wholly contrary regulatory criteria) that consumer welfare is state regulatory policy, it must address consumer welfare in its regulatory analysis. In claiming state action immunity, a Respondent would need to demonstrate that the state board, in evaluating arguably anticompetitive conduct, had carefully considered and expressly quantified the likely impact of that conduct on consumers as a central element of deciding whether to approve that conduct.[22]

In the present case, Indiana has expressly chosen to give significant consideration to, among other state interests, the interests of consumers when determining whether rates are ''just and reasonable'':

> In the exercise of its power to prescribe just and reasonable rates, fares and charges for the transportation of passengers and household goods * * * the department shall give due consideration, among other factors, to:
>
> * * * * *
>
> (3) The need, in the public interest, of adequate and efficient transportation service by such carrier at the lowest cost consistent with the furnishing of service.[23]

Thus, to establish active supervision, Respondent would be obligated to show that the State, when approving the rates at issue, performed an analysis and quantification of whether the rates to consumers were ''at the lowest cost consistent with the furnishing of service.''

VI. Opportunity for Public Comment

The standards of active supervision remain those laid out by the Supreme Court in Midcal and its progeny. Those standards have been explained in detail above to further illustrate how they would apply should Respondent seek to modify this proposed Order. Applying these standards, the Commission believes, will further the principles of federalism and accountability enunciated by the Supreme Court, will help clarify for States and private parties the reach of federal antitrust law, and will ultimately redound to the benefit of consumers.

The proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the proposed Complaint will be resolved.

[18] A record preserved by other means, such as audio or video recording technology, might also suffice, provided that it demonstrated that the board had (1) genuinely assessed the private conduct and (2) taken direct responsibility. Such an audio or video recording, however, will be an adequate substitute for a written opinion only when it provides a sufficiently transparent and decipherable view of the decision-making proceeding to facilitate meaningful public review and comment.

[19] Ticor, 504 U.S. at 634–35.

[20] Indeed, consideration of consumer impact is at the heart of ''[a] national policy'' that preserves ''the free market and . . . a system of free enterprise without price fixing or cartels.'' Ticor, 504 U.S. at 632.

[21] Id. at 639 (''No antitrust offense is more pernicious than price fixing.'')

[22] This requirement is based on the principle that the national policy favoring competition ''is an essential part of the economic and legal system within which the separate States administer their own laws.'' Id. at 632.

[23] Ind. Code Ann. § 8–2.1–22–21(a) (Michie 2001).

The purpose of this analysis is to invite and facilitate public comment concerning the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–6888 Filed 3–21–03; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0270]

Federal Technology Service; Access Certificates for Electronic Services (ACES)

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Access Certificates for Electronic Services (ACES).

The ACES Program is designed to facilitate and promote secure electronic communications between online automated information technology application systems authorized by law to participate in the ACES Program and users who elect to participate in the program, through the implementation and operation of digital signature certificate technologies. Individual digital signature certificates are issued at no cost to individuals based upon their presentation of verifiable proof of identity in an authorized ACES Registration Authority. Business Representative digital signature certificates are issued to individuals based upon their presentation of verifiable proof of identity and verifiable proof of authority from the claimed entity to an authorized ACES Registration Authority. If authorized by law, a fee may be charged for issuance of a Business Representative certificate.

Public comments are particularly invited on: Whether this collection is necessary for the proper performance of the functions of GSA, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* May 23, 2003.

ADDRESSES: Submit comments regarding this information collection to Stephanie Morris, General Services Administration, Regulatory & Federal Assistance Publications Division, 1800 F Street, NW., Room 4035, Washington, DC 20405 or fax to (202) 501–4067. Please cite OMB Control Number 3090–0270.

FOR FURTHER INFORMATION CONTACT: Stephen Duncan, Federal Technology Service, GSA (202) 708–7626 or by e-mail at *stephen.duncan@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

One of the primary goals of the emerging Government Services Information Infrastructure (GSII) is to facilitate public access to government information and services through the use of information technologies. One of the specific goals of the GSII is to provide the public with a choice of using Internet-based, online access to the automated information technology application systems operated by government agencies; such access will make it easier and less costly for the public to complete transactions with the government. By law, access to some of these automated information technology application systems can be granted only after the agency operating the system is provided with reliable information that the individual requesting such access is who he/she claims to be, and that he/she is authorized such access. The arms-length transactions envisioned by the GSII require implementation of methods for:

1. Reliably establishing and verifying the identity of the individuals desiring to participate in the ACES Program, based primarily upon electronic communications between the applicant and authorized ACES Registration Authority.

2. Issuing to the individuals who have been successfully identified a means that they can use to uniquely identify themselves to the automated information technology application systems participating in the ACES Program.

3. Electronically and securely passing that identity to the automated information technology application system to which the individual is requesting access.

4. Electronically and securely authenticating that identity, through a trusted third party, each time it is presented to an automated information technology application system participating in the ACES Program.

5. Ensuring that the identified individual requesting access to an automated information technology application system has been duly authorized, by the management of that automated information technology application system, to access that system and perform the transactions desired.

6. Ensuring that the information being exchanged between the individual and the automated information technology application system has not been corrupted during transmission.

7. Reducing the ability of the parties to such transactions to repudiate the actions taken.

The current state-of-the-art suggests that digital signature certificate technologies (often referred to as part of ''Public Key Infrastructure, or PKI'') provide a reliable and cost efficient means for meeting many of these GSII requirements. Thus, the ACES Program should be understood to represent an effort to implement and continue a PKI through which members of the public who desire to do so can securely communicate electronically with the online automated information technology application systems participating in the ACES Program.

The initial step for any member of the public to take in order to participate in the ACES Program is to submit an application for an ACES certificate to an authorized ACES Registration Authority. In conjunction with application process, the applicant will be required to submit at least:

a. His/her full name.

b. His/her place of birth.

c. His/her date of birth.

d. His/her current address and telephone number.

e. At least three (3) of the following:

i. Current valid state issued driver license number or number of state issued identification card.

ii. Current valid passport number.

iii. Current valid credit card number.

iv. Alien registration number (if applicable).

v. Social Security Number.

vi. Current employer name, address, and telephone number.

f. If the registration is for a business representative certificate, evidence of authorization to represent that business entity.

The information provided during the process of applying for an ACES certificate constitutes the continued information collection activity that is the subject of this Paperwork Reduction Act Notice and request for comments.

B. Description

A detailed description of the current ACES Program is available on the World Wide Web at *http://www.gsa.gov/aces,* or through the **FOR FURTHER INFORMATION CONTACT** listed above.

Please note that all ACES identity information collected from the public is covered by the Privacy Act, the Computer Security Act, and related privacy and security regulations, regardless of whether it is provided directly to an agency of the Federal Government or to an authorized ACES Registration Authority providing ACES-related services under a contract with GSA. Compliance with all of the attending requirements is enforced through binding contracts, periodic monitoring by GSA, annual audits by independent auditing firms, and annual re-accreditation by GSA. Only fully accredited Registration Authorities will be permitted to accept and maintain identity information provided by the public.

The identity information collected will be used only to establish and verify the identity and eligibility of applicants for ACES certificates; no other use of the information is permitted.

Participation in the ACES Program is strictly voluntary, but participation will only be permitted upon presentation of identity information by the applicant, and verification of that information by an authorized ACES Registration Authority.

ACES is designed to permit on-line, arms-length registration through the Internet, which significantly reduces the public's reporting burden. Based upon preliminary tests run on similar systems for gathering identity-related information from the public (*e.g.*, U.S. Passports, initial issuance of state-issued driver's license, etc.), the individual reporting burden for providing identity information for the initial ACES certificate is estimated at an average of 15 minutes, including gathering the information together and entering the data into the electronic forms provided by the authorized ACES Registration Authorities.

No reliable information is yet available to support any estimate relating to the number of individuals who will seek to register to participate in the ACES Program. Thus, no estimate of the overall reporting burden is being provided at this time.

C. Purpose

The General Services Administration will be requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0270, concerning ACES. GSA is responsible for assisting Federal agencies with the implementation and use of digital signature technologies to enhance electronic access to government information and services by all eligible persons. In order to ensure that the ACES program certificates are issued to the proper individuals, GSA will continue to collect identity information from persons who elect to participate in ACES.

D. Annual Reporting Burden

Respondents: 1,000,000.
Annual Responses: 1.
Average Hours Per Response: 0.25.
Burden Hours: 250,000.
Obtaining Copies of Proposal: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division(MVA), 1800 F Street, NW., room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0270, Access Certificates for Electronic Services (ACES).

Dated: March 14, 2003.

Susan White,

Deputy Chief Information Officer.

[FR Doc. 03–6945 Filed 3–21–03; 8:45 am]

BILLING CODE 6820–DH–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The President's Council on Bioethics; Request for Comments; Current Regulation of Assisted Reproduction, Embryo Research, and Human Genetics

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Request for comments.

SUMMARY: The President's Council on Bioethics requests that interested individuals and organizations submit written comments—normative as well as descriptive—on the current regulation of the biotechnologies that touch the beginnings of human life, more specifically on those technologies and practices that exist at the intersection of assisted reproduction, embryo research, and human genetics. The Council is especially interested to know commenters' opinions as to which human goods and values they think should animate any regulatory activities in this area, as well as on how well current practices promote and protect these goods and values. New technologies and practices, such as pre-implantation genetic diagnosis (PGD), greatly expand the power not simply to bring new life into existence in novel ways (as through in vitro fertilization) but also to select or even manipulate its character, fate, and future. The Council is thus deeply interested in how these activities are currently regulated, by whom, and to what effect. In an effort to better understand the contours of the current regulatory landscape, the Council has been studying: The legal authority and institutional competence of the Food and Drug Administration, professional self-regulation by practitioners of assisted reproduction, the current system of protecting human research subjects, and the patentability of human organisms, among other aspects of the subject. To ensure a thorough, accurate, and comprehensive understanding, the Council invites the public to submit written comment on this subject as well.

DATES: Submissions must be received on or before April 15, 2003.

Form of Submission: Submissions should be written, no more than 3,000 words long, and addressed to The President's Council on Bioethics, attention: O. Carter Snead, General Counsel.

ADDRESSES: E-mail (preferred): *submissions@bioethics.gov*. Fax: 202–296–3528. Mail: Suite 600, 1801 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: O. Carter Snead, General Counsel, The President's Council on Bioethics (202/296–4669; *submissions@bioethics.gov*).

SUPPLEMENTARY INFORMATION: The President's Council on Bioethics was created by Executive Order 13237, on November 28, 2001, to advise the President on the ethical and policy questions arising from developments in biomedical science and technology. For more information about the Council, see *http://www.bioethics.gov*.

Dated: March 14, 2003.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 03–6865 Filed 3–21–03; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Justin Radolf, M.D., University of Connecticut Health Center: Based on the report of an investigation conducted by the University of Connecticut Health Center (UCHC Report), Dr. Radolf's admissions, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Radolf, Professor at UCHC's Center of Microbial Pathogenesis, engaged in scientific misconduct in research supported by National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grant R01 AI29735–11 and incorporated false claims into a grant application entitled ''Tick Inhibitors of Hemostatis: Novel Therapeutic Agents and an Anti-Tick Vaccine'' to the United States Department of Agriculture (USDA). Dr. Radolf falsified and fabricated preliminary research data to falsely claim that the genes that he proposed to characterize were specifically expressed in the tick salivary gland. Dr. Radolf represented the products of control samples as positive tests for mRNA expression from different genes and presented data as positive for genes that had not been tested.

Specifically, PHS finds that Dr. Radolf falsified and fabricated data in January 2000 by altering the labeling of a figure included in a USDA grant application and by falsifying the text in both the USDA application and in an overlapping application to a state-sponsored program.

This incident of falsification and fabrication is significant because the data was the first direct evidence that the isolated clones represented genes expressed in tick salivary gland, and therefore represented proteins that could be targets of vaccine development to protect the hosts from tick-transmitted microbial diseases. The misinformation of the extent of the progress in this project had the potential to mislead grant reviewers and the scientific community about an area of research that could have led to the prevention of Rocky Mountain Spotted Fever and other tick-transmitted diseases.

The Respondent submitted the following admission to ORI: In January of 2000, I engaged in scientific misconduct involving research supported by the National Institutes of Health. The misconduct occurred during the preparation of grant proposals submitted to the United States Department of Agriculture and Connecticut Innovations, Inc. More specifically, I falsified and fabricated preliminary data by intentionally altering the labeling of an ethidium bromide-stained agarose gel purporting to demonstrate the expression of genes in the salivary glands of feeding Dermacentor andersoni ticks. In so doing, I misrepresented the products of control samples as positive tests for the presence of mRNAs derived from unrelated genes, and I fabricated data to show the expression of genes that, in fact, were not tested. The texts of the two proposals also contained inaccurate statements relating to these falsified and fabricated data. By inaccurately portraying the extent of our progress in characterizing salivary gland proteins that might interfere with tick feeding, my actions would have misled the reviewers of the proposals into thinking that we were closer to the development of an anti-tick vaccine than we actually were.

Truthfulness in the recording, presentation, and reporting of data—the accuracy and reliability of the research record—is the foundation of all scientific research. By intentionally misrepresenting preliminary findings in the two grant proposals, my actions violated this basic precept, compromised my scientific integrity, and placed my 20-year career as a biomedical researcher in jeopardy. My actions also could have compromised the integrity and careers of individuals with whom I work, individuals who place their trust in me and who look to me for scientific leadership. I take full and complete responsibility for this misconduct. I committed this wrongful act without prompting by other individuals and without the consent or knowledge of others. I am deeply remorseful for my behavior and offer my strongest assurance to the Office of Research Integrity that it will never recur.

Dr. Radolf has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of five (5) years, beginning on March 10, 2003:

(1) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) That any institution which submits an application for PHS support for a research project on which Dr. Radolf's participation is proposed or which uses Dr. Radolf in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which Dr. Radolf is involved, must concurrently submit a plan for supervision of Dr. Radolf's duties to the funding agency for approval; the supervisory plan must be designed to ensure the scientific integrity of Dr. Radolf's research contribution; a copy of the supervisory plan must also be submitted to ORI by the institution; Dr. Radolf agrees that he will not participate in any PHS-supported research until such a supervision plan is submitted to ORI; and

(3) To ensure that any institution employing him submits, in conjunction with each application for PHS funds or report, manuscript, or abstract of PHS funded research in which Dr. Radolf is involved, a certification that the data provided by Dr. Radolf are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application or report. Dr. Radolf must ensure that the institution sends the certification to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–6894 Filed 3–21–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Preliminary Measure Set for Home Health in the National Healthcare Quality Report—Request for Comments

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for comments.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a request for public comment on the Preliminary Measure Set on home health to be used in preparing the National Healthcare Quality Report (NHQR). The NHQR is a congressionally

mandated annual report (*see* 42 U.S.C. 299b–2(b)(2)) on national trends with respect to health care quality. The legislation mandated that AHRQ submit this report on an annual basis beginning in 2003. The preliminary Measure Set for the NHQR was generated through a call for health care quality measures to Federal agencies and private organizations.

DATES: Written comments on this notice must be received by April 23, 2003.

ADDRESSES: Written comments should be submitted to: Judith Sangl, Sc.D., Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Boulevard, Suite 200, Rockville, MD 20852, Fax: (301) 594–2155, E-mail: *jsangl@ahrq.gov.*

Public Review of Comments

Comments and responses received will be available for public inspection at AHRQ's Information Resource Center (IRC) public reading room between the hours of 8:30 a.m. and 5 p.m. on regular business days at 2101 East Jefferson Street, Suite 500, Rockville, MD 20852. Arrangements for viewing public comments may be made by calling (301) 594–6394. Responses may also be accessed through AHRQ's Electronic Freedom of Information Reading Room on AHRQ's Web site at *http://www.ahrg.gov/news/foiaindx.htm.*

Availability of Technical Expert Panel (TEP) Meeting Transcript and Background Materials

Copies of the transcript from the TEP meeting are available from the AHRQ Web site at: *http://www.ahrg.gov/qual/nhrq02/hhmtep.htm.* For organizations without access to the Internet, AHRQ will make a paper version available either through overnight mail or by fax upon written request. Requests for paper versions of the preliminary measure set should be faxed to the above fax number. The background materials will be available in the IRC (see address above).

FOR FURTHER INFORMATION CONTACT: Judith Sangl, Sc.D. (*See* information under **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. Background

This request follows up on an earlier request for public comments on the preliminary measure set dated August 19, 2002. At that time, no home health measures were proposed for the preliminary measure set because AHRQ was working together with the Centers for Medicare & Medicaid Services (CMS) to determine as appropriate set of measures for the CMS public reporting initiative on home health as well as the NHQR. AHRQ and CMS decided that, in the short term, the Outcome and Assessment Information (OASIS) measures would be used as the initial measure set because there is more standardization around these measures than any other in home health care. This view was reiterated in the one comment received in response to the August request, *i.e.,* that OASIS measures were the best currently available to measure the quality of home health care.

OASIS is a uniform set of patient assessment items developed for monitoring and measuring outcomes of care, adjusted for patient factors that might affect those outcomes. The OASIS data set is the only national, standardized data source on adult home health care delivery. The OASIS instrument was created over a 14-year period to measure functional outcomes for the purpose of improving quality of home health care. It was developed through a scientific process, using input from the home healthcare industry, and has been tested for validity and reliability. All Medicare certified home health agencies (HHAs) implemented the OASIS instrument nationwide for collection and reporting of comprehensive patient assessments in October 1999. There are 41 measures derived from OASIS data covering (1) functional outcomes; (2) physiologic outcome; (3) emotional/behavioral/cognitive outcomes; and (4) utilization outcome measures. When one includes the additional 13 low-frequency adverse patient outcomes identified from OASIS data, there are a total of 54 measures. The Web site at *www.cms.hhs.gov/providers/hha/* contains extensive detail on the development of OASIS, a copy of the OASIS data collection form (OASIS B1) and measure definitions.

Because CMS currently wanted to select a subset of OASIS measures for its home health public quality reporting initiative, AHRQ decided to convene a technical expert panel (TEP) to review the set of OASIS home health quality measures as candidates for both the NHQR and the CMS home health care public reporting initiative. Accordingly, AHRQ convened a TEP on October 21–22, 2002 with the purpose of addressing these two independent but overlapping efforts being planned by CMS and AHRQ.

2. TEP Composition and Meeting Process

The TEP was composed of 18 members representing a wide range of disciplines and interests: home health agency representatives, clinicians (both physicians and nurses), an epidemiologist, consumer reporting experts and a consumer groups organization, quality improvement organizations, State survey agencies, and home health services researchers. The panelist list is included in the meeting transcript on the AHRQ site at *http://www.ahrq.gov/qual/nhrq02/hhmtep.htm.*

AHRQ and CMS staff gave introductory remarks and overviews of the two parallel purposes and goals of the meeting. Speakers gave background presentations on: (1) Development of the OASIS measures, their statistical properties, and their use in quality improvement and (2) results of testing OASIS measures (in plain language) in focus group with consumers and interviews with physicians and discharge planners, who would be users of such quality measure information. Results of these focus groups are also on the above referenced AHRQ Web site.

After presentation of the introductory background material, the meeting facilitator described how the remainder of the meeting would proceed. Since this technical expert panel was not established as a formal Federal advisory committee, AHRQ would not seek any formal votes from the panel nor consensus from the panel members. Instead, the emphasis would be on viewpoints of the individual panel members as each of the existing OASIS measures was discussed according to pre-established criteria (*see* Attachment A in the meeting transcript on the AHRQ Web site), derived from criteria for quality measures developed by the Institute of Medicine for the NHQR. Panelists were given a workbook with criteria worksheets and statistical properties for each of the measures. The presenters stayed during the entire meeting for technical support and clarifications.

At the end of the second day, all of the panel members were asked to bring together their values, insights and assessments to provide input to AHRQ on which of the 41 OASIS measures should be priority items for the two purposes: (1) AHRQ's NHQR and (2) CMS's home health public reporting initiative. It was acknowledged that these two priority measure lists might be different.

The meeting was open to the public and representatives from the home health industry trade associations, industry consultants, agencies and journalists attended.

3. OASIS Measures Reviewed by Panel

The Panel was charged with focusing on 41 OASIS measures, a subset of the

54 measures in OASIS. To facilitate discussion, these 41 measures were put into 13 categories (used in consumer testing) and three domains (adapted from the Foundation for Accountability framework) as follows:

• Domain: Getting Better

Category 1: Physical Health

Improvements in: Dyspnea, status of surgical wounds, number of surgical wounds, urinary tract infection, urinary incontinence, bowel incontinence.

Category 2: Mental Health

Improvements in: Behavior problem frequency, cognitive functioning, confusion frequency, anxiety level.

Category 3: Meeting Basic Daily Needs

Improvements in: Eating, upper body dressing, lower body dressing, in bathing, grooming, management of oral medications.

Category 4: Getting Around

Improvements in: Ambulation/locomotion, toileting, transferring, pain interfering with activity.

Category 5: Meeting Household Needs

Improvements in: Light meal preparation, laundry, shopping, housekeeping.

Category 6: Talking With People

Improvements in: Speech and language, phone use.

Category 7: Staying at Home Without Home Care

Discharged to community.

• Domain: Living With Illness or Disability

Category 8: Meeting Basic Daily Needs

Stabilization in: Bathing, grooming, management of oral medications.

Category 9: Meeting Household Needs

Stabilization in: Light meal preparation, laundry, shopping, housekeeping.

Category 10: Mental Health

Stabilization in: Cognitive functioning, anxiety level.

Category 11: Getting Around

Stabilization in: Transferring.

Category 12: Talking With People

Stabilization in: Speech and language, phone use.

• Domain: Staying Healthy/Avoiding Injury or Harm

Category 13: Medical Emergencies

Any emergency care provided, acute care hospitalization.

CMS and AHRQ focused panel attention on just these 41 measures because they assess long-term quality improvement issues that every home health agency should address. These OASIS measures are not specific to particular diagnoses but the functional outcomes they measure apply to many diagnoses. There are an additional 13 adverse event outcome OASIS measures that were not considered by the panel because they cover events that occur infrequently.

4. AHRQ Proposed Recommendations for Home Health Care Measures for the NHQR

Based on the Home Health Quality Measures Technical Expert Panel input, including: the individual panelist prioritization lists (*i.e.,* a significant proportion of panelists listed particular measures as priority items for inclusion), their written comments and the meeting discussion, AHRQ proposes using results collected on the following 12 OASIS measures for reporting on the quality of home health care in the NHQR:

—Improvement in dyspnea (physical health category);
—Improvement in urinary incontinence (physical health category);
—Improvement in upper body dressing (basic daily needs category);
—Improvement in management of oral medications dressing (basic daily needs category);
—Improvement in ambulation/locomotion (getting around category);
—Improvement in toileting (getting around category);
—Improvement in transferring (getting around category);
—Improvement in pain interfering with activity (getting around category);
—Improvement in bathing (basic daily needs category);
—Stabilization in bathing (basic daily needs category);
—Improvement in confusion frequency (mental health);
—Acute care hospitalization (medical emergencies category).

AHRQ is soliciting public comment on this proposed set of 12 home health care measures selected from the 41 OASIS measures considered. Ten of these measures are the same as CMS has announced for use in its initial home health public reporting effort. Based on panel input regarding the NHQR, AHRQ is recommending two additional measures, ''Improvement in dyspnea'' and ''Improvement in urinary incontinence.'' Finally, although CMS is using the measure, ''Any Emergency Care,'' (one of the OASIS measures listed above in Category 13), AHRQ is not recommending this measure for the NHQR at this time because we believe that this measure raises some significant issues that warrant further investigation. AHRQ would like to hear comments on the advantages and disadvantages of this measure in particular.

Carolyn M. Clancy,

Director.

[FR Doc. 03–6879 Filed 3–21–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–53]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The National Violent Death Reporting System—New—National Center for Injury prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Violence is an important public health problem. In the United States, homicide and suicide are the second

and third leading causes of death, respectively, in the 1–34 year old age group. Unfortunately, public health agencies don't know much more about the problem than the numbers and the sex, race, and age of the victims, all information obtainable from the standard death certificate. Death certificates, however, carry no information about key facts necessary for prevention such as the relationship of the victim and suspect and the circumstances of the deaths, thereby making it impossible to discern anything but the gross contours of the problem. Furthermore, death certificates are typically available 20 months after the completion of a single calendar year. Official publications of national violent death rates, *e.g.* those in Morbidity and Mortality Weekly Report, rarely use data that is less than two years old. Public health interventions aimed at a moving target last seen two years ago may well miss the mark.

Local and Federal criminal justice agencies such as the Federal Bureau of Investigation (FBI) provide slightly more information about homicides, but they do not routinely collect standardized data about suicides, which are in fact much more common than homicides. The FBI's Supplemental Homicide Report system (SHRs) does collect basic information about the victim-suspect relationship and circumstances, like death certificates, it does not link violent deaths that are part of one incident such as homicide-suicides. It also is a voluntary system in which some 10–20 percent of police departments nationwide do not participate. The FBI's National Incident Based Reporting System (NIBRS) addresses some of these deficiencies, but it covers less of the country than SHRs, still includes only homicides, and collects only police information. Also, the Bureau of Justice Statistics Reports do not use data that is less than two years old.

CDC therefore proposes to start a state-based surveillance systems for violent deaths that will provide more detailed and timely information. It will tap into the case records held by medical examiners/coroners, police, and crime labs. Data will be collected centrally by each state in the system, stripped of identifiers, and then sent to the CDC. Information will be collected from these records about the characteristics of the victims and suspects, the circumstances of the deaths, and the weapons involved. States will use standardized data elements and software designed by CDC. Ultimately, this information will guide states in designing programs that reduce multiple forms of violence.

Neither victim families nor suspects are contacted to collect this information. It all comes from existing records and is collected by state health department staff or their subcontractors. Health departments incur an average of 2.5 hours per death in identifying the deaths from death certificates, contacting the police and medical examiners to get copies of or to view the relevant records, abstracting all the records, various data processing tasks, various administrative tasks, data utilization, training, communications, etc.

The number of state health departments to be funded may be as high as 14 once FY03 cooperative agreements are awarded. Six states were funded thru FY02 cooperative agreements, and up to 8 more may be funded in 2003. NCIPC hopes to eventually fund all 50 states. Violent deaths include all homicides, suicides, legal interventions, deaths from undetermined causes, and unintentional firearm deaths. There are 50,000 such deaths annually among U.S. residents, so the average state will experience approximately 1,000 such deaths each year.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
State Health Departments	14	1,000	150/60	35,000
Total				35,000

Dated: March 13, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–6871 Filed 3–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–51]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Centers for Disease Control and Prevention's Performance Evaluation Program for Mycobacterium Tuberculosis and Non-Tuberculosis Mycobacterium (NTM) Drug Susceptibility Testing—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

As part of the continuing effort to support both domestic and global public health objectives for treatment of tuberculosis (TB), prevention of multi-drug resistance and surveillance programs, the Division of Laboratory Systems seeks to collect information from domestic private clinical and public health laboratories twice per year. Participation and information collections from international laboratories will be limited to those

which have public health responsibilities for tuberculosis drug susceptibility testing and approval by their national tuberculosis program. While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. The rate of TB cases detected in foreign-born persons has been reported to be almost nine times higher than the rate among the U.S. born population. CDC's goal to eliminate TB will be virtually impossible without considerable effort in assisting heavy disease burden countries in the reduction of tuberculosis. The M. tuberculosis/NTM program supports this role by monitoring the level of performance and practices among laboratories performing M. tuberculosis susceptibility within the U.S. as well as internationally to ensure high-quality laboratory testing, resulting in accurate and reliable results.

Information collected in this program will include the susceptibility test results of primary and secondary drugs, concentrations, and test methods performed by laboratories on a set of challenge isolates sent twice yearly.

A portion of the response instrument will collect demographic data such as laboratory type and the number of tests performed annually. By providing an evaluation program to assess the ability of the laboratories to test for drug resistant M. tuberculosis and selected strains of NTM, laboratories will also have a self-assessment tool to aid in maximizing their skills in susceptibility testing. Information obtained from laboratories on susceptibility testing practices and procedures will assist with determining variables related to good performance, with assessing areas for training and with developing practice standards. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondenst	Average Burden per response (in hours)	Total burden (in hours)
XXXX	165	30	30/60	82.5
YYYY	165	30	30/60	82.5
Total				165

Dated: March 12, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–6872 Filed 3–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research, SOH Conflict Review, Program Announcement #99–143

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Safety and Health Research, SOH Conflict Review, Program Announcement #99–143.

Times and Dates: 1 p.m.–1:30 p.m., April 8, 2003 (open). 1:30 p.m.–5 p.m., April 8, 2003 (closed).

Place: Executive Park, Building 24, Conference Room 1525, Atlanta, GA 30329.

Phone: 404.498.2508.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 99–143.

Contact Person for More Information: Gwendolyn Cattledge, Ph.D., Scientific Review Administrator, National Institute Occupational for Safety and Health, CDC, 1600 Clifton Rd., NE., MS–E74, Atlanta, GA 30333, Telephone (404) 498–2586.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 19, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–7002 Filed 3–20–03; 1:21 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0149]

Determination of Regulatory Review Period for Purposes of Patent Extension; GENESIS NEUROSTIMULATION SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GENESIS NEUROSTIMULATION SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

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

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period

forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device GENESIS NEUROSTIMULATION SYSTEM. GENESIS NEUROSTIMULATION SYSTEM is indicated as an aid in the management of chronic, intractable pain of the trunk and/or limbs, including unilateral or bilateral pain associated with failed back surgery syndrome, intractable low back pain, and leg pain. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GENESIS NEUROSTIMULATION SYSTEM (U.S. Patent No. 4,793,353) from Advanced Neuromodulation Systems, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of GENESIS NEUROSTIMULATION SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GENESIS NEUROSTIMULATION SYSTEM is 469 days. Of this time, 292 days occurred during the testing phase of the regulatory review period, while 177 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: August 11, 2000. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective on June 16, 1999. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on August 11, 2000, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: May 29, 2001. The applicant claims April 3, 2001, as the date the premarket approval application (PMA) for GENESIS NEUROSTIMULATION SYSTEM (PMA P010032) was initially submitted. However, FDA records indicate that PMA P010032 was submitted on May 29, 2001.

3. *The date the application was approved*: November 21, 2001. FDA has verified the applicant's claim that PMA P010032 was approved on November 21, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 840 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 23, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 22, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–6892 Filed 3–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the fiscal year 2002 annual report for the following Health Resources and Services Administration's Federal advisory committee has been filed with the Library of Congress: Maternal and Child Health Research Grants Review Committee.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room in the James Madison Memorial Building, Room LM–133 (entrance on Independence Avenue, between First and Second Streets, SE., Washington, DC).

Copies may be obtained from: Kishena C. Wadhwani, Ph.D., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Parklawn Building, Room 18A–55, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone 301–443–2340.

Dated: March 17, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–6858 Filed 3–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

OIG Compliance Program Guidance for Ambulance Suppliers

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This Federal Register notice sets forth the recently issued Compliance Program Guidance for Ambulance Suppliers developed by the Office of Inspector General (OIG). The OIG has previously developed and published voluntary compliance program guidance focused on several different areas of the health care

industry. This voluntary compliance program guidance should assist ambulance suppliers and other health care providers in developing their own strategies for complying with federal health care program requirements.

FOR FURTHER INFORMATION CONTACT: Sonya Castro, (202) 619–2078, or Joel Schaer, (202) 619–1306, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidances (CPGs) is a major initiative of the OIG in its effort to engage the private health care community in preventing the submission of erroneous claims and in combating fraudulent and abusive conduct. In the past several years, the OIG has developed and issued CPGs directed at a variety of segments in the health care industry. The development of these CPGs is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations, and program requirements. Copies of these CPGs can be found on the OIG Web site at *http://oig.hhs.gov.*

Developing Compliance Program Guidance for Ambulance Suppliers

Having experienced a number of instances of ambulance provider and supplier fraud and abuse, the ambulance industry has expressed interest in protecting against such conduct through increased guidance to the industry. To date, the OIG has issued several advisory opinions on a variety of ambulance-related issues (see endnote 13 in this compliance program guidance) and has published final rulemaking concerning a safe harbor for ambulance restocking arrangements (66 FR 62979; December 4, 2001).

To provide further guidance, the OIG published a **Federal Register** notice (65 FR 50204; August 17, 2000) that solicited general comments, recommendations, and other suggestions from concerned parties and organizations on how best to develop compliance guidance for ambulance suppliers to reduce the potential for fraud and abuse. On June 6, 2002, the OIG published a Draft Compliance Program Guidance to afford all interested parties a further opportunity to provide specific comments in the development of this final CPG (67 FR 39015; June 6, 2002). In response to that notice, the OIG received three public comments, collectively representing a variety of outside sources. We have carefully considered those comments, as well as previous OIG publications, and have consulted with the Centers for Medicare and Medicaid Services (CMS) and the Department of Justice in developing final guidance for ambulance suppliers. This final guidance outlines some of the most common and prevalent fraud and abuse risk areas for the ambulance industry and provides direction on how to: (1) Address various risk areas; (2) prevent the occurrence of instances of fraud and abuse; and (3) develop corrective actions when those risks or instances of fraud and abuse are identified.

This CPG is divided into the following five separate sections, with an appendix:

- Section I is a brief introduction.
- Section II provides information about the basic elements of a compliance program for ambulance suppliers.
- Section III discusses various fraud and abuse and compliance risks associated with ambulance services covered under the Medicare program.
- Section IV briefly summarizes compliance risks related to Medicaid coverage for transportation services.
- Section V discusses various risks under the anti-kickback statute.
- The appendix provides relevant statutory and regulatory citations, as well as brief discussions of additional potential risk areas to consider when developing a compliance program.

Under the Social Security Act (the Act), ambulance ''providers'' are Medicare participating institutional providers that submit claims for Medicare ambulance services (*e.g.*, hospitals, including critical access hospitals (CAHs) and skilled nursing facilities (SNFs); the term ''supplier'' means an entity that is other than a provider. For purposes of this document, we will refer to both ambulance suppliers and providers as ambulance ''suppliers.''

Compliance Program Guidance for Ambulance Suppliers

I. Introduction

The OIG recognizes that the ambulance industry is comprised of entities of enormous variation: some ambulance companies are large, many are small; some are for-profit, many are not-for-profit; some are affiliated with hospitals, many are independent; and some are operated by municipalities or counties, while others are commercially owned. Consequently, this guidance is not intended to be a one-size-fits-all guide. Rather, like the previous CPGs, this guidance is intended as a helpful tool for those entities that are considering establishing a voluntary compliance program and for those that have already done so and are seeking to analyze, improve or expand existing programs. As with the OIG's previous guidance, the guidelines discussed in this CPG are not mandatory, nor is the CPG an all-inclusive document containing all the components of a compliance program. Other OIG outreach efforts, as well as other federal agency efforts to promote compliance, can and should also be used in developing a compliance program tailored to an entity's particular structure and operations.

This guidance focuses on compliance measures related to services furnished primarily under the Medicare program and, to a limited extent, other federal health care programs. (See, *e.g.*, section IV for a brief discussion of Medicaid ambulance coverage.) Suppliers are free to address private payor claims and services in their compliance programs.

As in other sectors of the health care industry, most ambulance suppliers are honest suppliers trying to deliver quality services. However, like other health care industry sectors, the ambulance industry has seen its share of fraudulent and abusive practices. The OIG has reported and pursued a number of different fraudulent and abusive practices in the ambulance transport field. Examples include:

- Improper transport of individuals with other acceptable means of transportation;
- Medically unnecessary trips;
- Trips claimed but not rendered;
- Misrepresentation of the transport destination to make it appear as if the transport was covered;
- False documentation;
- Billing for each patient transported in a group as if he/she was transported separately;
- Upcoding from basic life support to advanced life support services; and
- Payment of kickbacks.

To help reduce the incidence and prevalence of fraudulent or abusive conduct, an ambulance supplier should consider the recommendations in this guidance.

This final CPG has been modified from the draft CPG to take into further consideration CMS's adoption of a new fee schedule for payment of ambulance services. The CMS's ambulance fee schedule is the product of a negotiated rulemaking process and will replace (over a five-year transition period) the retrospective, reasonable cost reimbursement system for providers, and the reasonable charge system for suppliers of ambulance services. As the government and the industry gain more experience under the new fee schedule,

the OIG may update or supplement this CPG to address newly identified risk areas, as appropriate.

II. Elements of a Compliance Program for Ambulance Suppliers

A. Basic Elements of a Compliance Program

The following basic components have become accepted as the building blocks of an effective compliance program:

1. Development of Compliance Policies and Procedures

The ambulance supplier should develop and distribute written standards of conduct, as well as written policies and procedures, that reflect the ambulance supplier's commitment to compliance and address specific areas of potential fraud or abuse. These written policies and procedures should be reviewed periodically (*e.g.*, annually) and revised as appropriate to ensure they are current and relevant.

2. Designation of a Compliance Officer

The ambulance supplier should designate a compliance officer and other appropriate bodies (*e.g.*, a compliance committee) charged with the responsibility for operating and monitoring the organization's compliance program. The compliance officer should be a high-level individual in the organization who reports directly to the organization's upper management, such as the chief executive officer or board of directors. The OIG recognizes that an ambulance supplier may tailor the job functions of the compliance officer position by taking into account the size and structure of the organization, existing reporting lines, and other appropriate factors.

3. Education and Training Programs

A key element of a compliance program should be regular training and education of employees and other appropriate individuals. Training content should be tailored appropriately and should be delivered in a way that will maximize the chances that the information will be understood by the target audience.

4. Internal Monitoring and Reviews

Appropriate monitoring methods are essential to detect and identify problems and to help reduce the future likelihood of problems.

5. Responding Appropriately to Detected Misconduct

Ambulance suppliers should develop policies and procedures directed at ensuring that the organization responds appropriately to detected offenses, including the initiation of appropriate corrective action. An organization's response to detected misconduct will vary based on the facts and circumstances of the offense. However, the response should always be appropriate to resolve and correct the situation in a timely manner. The organization's compliance officer, and legal counsel in some circumstances, should be involved in situations when serious misconduct is identified.

6. Developing Open Lines of Communication

Ambulance suppliers should create and maintain a process, such as a hotline or other reporting system, to receive and process complaints and to ensure effective lines of communication between the compliance officer and all employees. Further, procedures should be adopted to protect the anonymity of complainants, where the complainants desire to remain anonymous, and to protect whistleblowers from retaliation.

7. Enforcing Disciplinary Standards Through Well-Publicized Guidelines

Ambulance suppliers should develop policies and procedures to ensure that there are appropriate disciplinary mechanisms and standards that are applied in an appropriate and consistent manner. These policies and standards should address situations in which employees or contractors violate, whether intentionally or negligently, internal compliance policies, applicable statutes, regulations, or other federal health care program requirements.

Developing and implementing a compliance program may require significant resources and time. An individual ambulance supplier is best situated to tailor compliance measures to its own organizational structure and financial capabilities. In addition, compliance programs should be reviewed periodically to account for changes in the health care industry, federal health care statutes and regulations, relevant payment policies and procedures, and identified risks.

B. Evaluation and Risk Analysis

It is prudent for ambulance suppliers conducting a risk analysis to begin by performing an evaluation of internal and external factors that affect their operations. These may include internal systems and management issues, as well as the federal health care program requirements that govern their business operations. In many cases, such evaluation will result in the creation and adoption or revision of written policies and procedures. The evaluation process may be simple and straightforward or it may be fairly complex and involved. For example, an evaluation of whether an ambulance supplier's existing written policies and procedures accurately reflect current federal health care program requirements is straightforward. However, an evaluation of whether an ambulance supplier's actual practices conform to its policies and procedures may be more complex and require several analytical evaluations to determine whether system weaknesses are present. Even more complex is an evaluation of an ambulance supplier's practices in light of applicable statutes, regulations, and other program requirements, when there are no pre-existing written policies and procedures.

The evaluation process should furnish ambulance suppliers with a snapshot of their strengths and weaknesses and assist providers in recognizing areas of potential risk. We suggest that ambulance suppliers evaluate a variety of practices and factors, including their policies and procedures, employee training and education, employee knowledge and understanding, claims submission process, coding and billing, accounts receivable management, documentation practices, management structure, employee turnover, contractual arrangements, changes in reimbursement policies, and payor expectations.

1. Policies and Procedures

Because policies and procedures represent the written standard for daily operations, an ambulance supplier's policies and procedures should describe the normal operations of the ambulance supplier and the applicable rules and regulations. Further, written policies and procedures should go through a formal approval process within the organization and should be evaluated on a routine basis, and updated as needed, to reflect current ambulance practices (assuming these practices are appropriate and comport with the relevant statutes, regulations, and program requirements). In addition, ambulance suppliers should review policies and procedures to ensure that they are representative of actual practices. For example, an ambulance supplier's policy for reviewing ambulance call reports (ACRs) should not state that it will review 100 percent of its ACRs, unless the ambulance supplier is capable of performing and enforcing such comprehensive reviews.

2. Training and Education

Ensuring that a supplier's employees and agents receive adequate education and training is essential to minimizing risk. Employees should clearly understand what is expected of them and for what they will be held accountable. Suppliers should also document and track the training they provide to employees and others.

An ambulance supplier should consider offering two types of compliance training: compliance program training and job-specific training. If an ambulance supplier is implementing a formal compliance program, employees should be trained on the elements of the program, the importance of the program to the organization, the purpose and goals of the program, what the program means for each individual, and the key individuals responsible for ensuring that the program is operating successfully. Compliance program education should be available to all employees, even those whose job functions are not directly related to billing or patient care.

Ambulance suppliers should also train employees on specific areas with regard to their particular job positions and responsibilities, whether or not as part of a formal compliance plan. The intensity and the nature of the specific training will vary by employee type. Training employees on the job functions of other people in the organization may also be an effective training tool. Appropriate cross-training can improve employees' overall awareness of compliance and job functions, thereby increasing the likelihood that an individual employee will recognize non-compliance. Training should be provided on a periodic basis to keep employees current on ambulance supplier requirements, including, for example, the latest payor requirements. Ambulance suppliers should conduct or make available training for employees at least yearly, and more often if needed.

Generally, employees who attend interactive training better comprehend the material presented. Interactive training offers employees the chance to ask questions and receive feedback. When possible, ambulance suppliers should use ''real'' examples of compliance pitfalls provided by personnel with ''real life'' experience, such as emergency medical technicians and paramedics.

The OIG is cognizant that offering interactive, live training often requires significant personnel and time commitments. As appropriate, ambulance suppliers may wish to consider seeking, developing, or using other innovative training methods. Computer or internet modules may be an effective means of training if employees have access to such technology and if a system is developed to allow employees to ask questions. The OIG cannot endorse any commercial training product; it is up to each ambulance supplier to determine if the training methods and products are effective and appropriate.

Whatever form of training ambulance suppliers provide, the OIG also recommends that employees complete a post-compliance training test or questionnaire to verify comprehension of the material presented. This will allow a supplier to assess the effectiveness and quality of its training materials and techniques. Additionally, training materials should be updated as appropriate and presented in a manner that is understandable by the average trainee. Finally, the OIG suggests that the employees' attendance at, and completion of, training be tracked and appropriate documentation maintained.

3. Assessment of Claims Submission Process

Ambulance suppliers should conduct periodic claims reviews to verify that a claim ready for submission, or one that has been submitted and paid, contains the required, accurate, and truthful information required by the payor. An ambulance claims review should focus, at a minimum, on the information and documentation present in the ACR, the medical necessity of the transport as determined by payor requirements, the coding of the claim, the co-payment collection process, and the subsequent payor reimbursement. The claims reviews should be conducted by individuals with experience in coding and billing and familiar with the different payors' coverage and reimbursement requirements for ambulance services. The reviewers should be independent and objective in their approach. Claims reviewers who analyze claims that they themselves prepared or supervised often lack sufficient independence to accurately evaluate the claims submissions process and the accuracy of individual claims. The appearance of a lack of independence may hinder the effectiveness of a claims review.

Depending on the purpose and scope of a claims review, there are a variety of ways to conduct the review. The claims review may focus on particular areas of interest (*e.g.,* coding accuracy), or it may include all aspects of the claims submission and payment process. The universe from which the claims are selected will comprise the area of focus for the review. Once the universe of claims has been identified, an acceptable number of claims should be randomly selected. Because the universe of claims and the variability of items in the universe will vary, the OIG cannot specify a generally acceptable number of claims for purposes of a claims review. However, the number of claims sampled and reviewed should be sufficient to ensure that the results are representative of the universe of claims from which the sample was pulled.

Ambulance suppliers should not only monitor identified errors, but also evaluate the source or cause of the errors. For example, an ambulance supplier may identify through a review a certain claims error rate. Upon further evaluation, the ambulance supplier may determine that the errors were a result of inadequate documentation. Further evaluation may reveal that the documentation deficiencies involve a limited number of individuals who work on a specific shift. It is the ambulance supplier's responsibility to identify such weaknesses and to correct them promptly. In this example, at a minimum, additional employee training should be required and any identified overpayment repaid. A detailed and logical analysis will make claims reviews useful tools for identifying risks, correcting weaknesses, and preventing future errors.

Ambulance suppliers should consider using a baseline audit to develop a benchmark against which to measure performance. This audit will establish a consistent methodology for selecting and examining records in future audits. Comparing audit results from different audits will generally yield useful results only when the audits analyze the same or similar information and when matching methodologies are used.

As part of its compliance efforts, an ambulance supplier should document how often audits or reviews are conducted and the information reviewed for each audit. The ambulance supplier should not only use internal benchmarks, but should utilize external information, if available, to establish benchmarks (*e.g.,* data from other ambulance suppliers, associations, or from payors). Additionally, risk areas may be identified from the results of the audits.

If a material deficiency is identified that could be a potential criminal, civil, or administrative violation, the ambulance supplier may disclose the matter to the OIG via the Provider Self-Disclosure Protocol. The Provider Self-Disclosure Protocol was designed to allow providers/suppliers to disclose

voluntarily potential violations in their dealings with the federal health care programs. In all cases, identified overpayments should be reported to the appropriate payor.

a. Pre-Billing Review of Claims

As a general matter, ambulance suppliers should review claims on a pre-billing basis to identify errors before claims are submitted. If there is insufficient documentation to support the claim, the claim should not be submitted. Pre-billing reviews also allow suppliers to review the medical necessity of their claims. If, as a result of the pre-billing claims review process, a pattern of claim submission or coding errors is identified, the ambulance supplier should develop a responsive action plan to ensure that overpayments are identified and repaid.

b. Paid Claims

In addition to a pre-billing review, a review of paid claims may be necessary to determine error rates and quantify overpayments and/or underpayments. The post-payment review may help ambulance suppliers in identifying billing or coding software system problems. Any overpayments identified from the review should be promptly returned to the appropriate payor in accordance with payor policies.

c. Claims Denials

Ambulance suppliers should review their claims denials periodically to determine if denial patterns exist. If a pattern of claims denials is detected, the pattern should be evaluated to determine the cause and appropriate course of action. Employee education regarding proper documentation, coding, or medical necessity may be appropriate. If an ambulance supplier believes its payor is not adequately explaining the basis for its denials, the ambulance supplier should seek clarification in writing.

4. System Reviews and Safeguards

Periodic review and testing of a supplier's coding and billing systems are also essential to detect system weaknesses. One reliable systems review method is to analyze in detail the entire process by which a claim is generated, including how a transport is documented and by whom; how that information is entered into the supplier's automated system (if any); coding and medical necessity determination protocols; billing system processes and controls, including any edits or data entry limitations; and finally the claims generation, submission, and subsequent payment tracking processes. A weakness or deficiency in any part of the supplier's system can lead to improper claims, undetected overpayments, or failure to detect system defects.

Each ambulance supplier should have computer or other system edits to ensure that minimum data requirements are met. For example, under CMS's new fee schedule, each transport claim that does not have an originating zip code listed should be ''flagged'' by the system. Other edits should be established to detect potentially improper claims submissions. A systems review is especially important when documentation or billing requirements are modified or when an ambulance supplier changes its billing software or claims vendors. As appropriate, ambulance suppliers should communicate with their payor when they are implementing significant changes to their system to alert the payor to any unexpected delays, or increases or decreases in claims submissions.

Ambulance suppliers should ensure that their electronic or computer billing systems do not automatically insert information that is not supported by the documentation of the medical or trip sheets. For example, billing systems targeting optimum efficiency may be set with defaults to indicate that a physician's signature was obtained following an emergency room transport. If information is automatically inserted onto a claim submitted for reimbursement, and that information is false, the ambulance supplier's claims will be false. If a required field on a claim form is missing information, the system should flag the claim prior to its submission.

5. Sanctioned Suppliers

Federal law prohibits Medicare payment for services furnished by an excluded individual, such as an excluded ambulance crew member. Accordingly, ambulance suppliers should query the OIG and General Services Administration (GSA) exclusion and debarments lists before they employ or contract with new employees or new contractors. Additionally, ambulance suppliers should periodically (at least yearly) check the OIG and GSA web sites to ensure that they are not employing or contracting with individuals or entities that have been recently convicted of a criminal offense related to health care or who are listed as debarred, suspended, excluded, or otherwise ineligible for participation in federal health care programs. The OIG and GSA Web sites are listed at *http://oig.hhs.gov* and *http://www.arnet.gov/epls,* respectively, and contain specific instructions for searching the exclusion and debarment databases.

C. Identification of Risks

This ambulance CPG discusses many of the areas that the ambulance industry, the OIG, or CMS have identified as common risks for many ambulance suppliers. However, this CPG does not identify or discuss all risks that an ambulance supplier may itself identify. Moreover, the CPG may ascribe more or less risk to a particular practice area than an ambulance supplier would encounter based on its own internal findings and circumstances. Because there are many different types of risk areas, ambulance suppliers should prioritize their identified risks to ensure that the various areas are addressed appropriately. Apart from the risks identified in this CPG, ambulance suppliers of all types (*e.g.*, small, large, rural, emergency, non-emergency) should evaluate whether they have any unique risks attendant to their business relationships or processes. For example, a small, rural not-for-profit ambulance supplier may identify risk areas different from those of a large, for-profit ambulance chain that serves a primarily urban area. To stay abreast of risks affecting the ambulance and other health care industries, the OIG recommends that ambulance suppliers review OIG publications regarding ambulance services, including OIG advisory opinions, OIG fraud alerts and bulletins, Office of Evaluation and Inspections (OEI) reports, and Office of Audit Services reports, all located on the OIG's Web site at *http://oig.hhs.gov.* A review of industry-specific trade publications will also help ambulance suppliers remain current on industry changes.

D. Response to Identified Risks

An ambulance supplier should develop a reasonable response to address identified risk areas, including written protocols and reasonable time frames for specific situations. Developing timely and appropriate responsive actions demonstrates the supplier's commitment to address problems and concerns. Determining whether identified problems respond to corrective actions may require continual oversight.

III. Specific Fraud and Abuse Risks Associated With Medicare Ambulance Coverage and Reimbursement Requirements

Ambulance suppliers should review and understand applicable ambulance coverage requirements. Ambulance suppliers that are not complying with applicable requirements should take appropriate, prompt corrective action to follow the relevant requirements. The new fee schedule covers seven levels of service, including Basic Life Support (BLS), Advanced Life Support, Level 1 (ALS1), Advanced Life Support, Level 2 (ALS2), Specialty Care Transport, Paramedic ALS Intercept, Fixed Wing Air Ambulance, and Rotary Wing Air Ambulance. Generally, Medicare Part B covers ambulance transports if applicable vehicle and staff requirements, medical necessity requirements, billing and reporting requirements, and origin and destination requirements are met. Medicare Part B will not pay for ambulance services if Part A has paid directly or indirectly for the same services.

A. Medical Necessity

Medically unnecessary transports have formed the basis for a number of Medicare and Medicaid fraud cases. Consequently, medical necessity is a risk area that should be addressed in an ambulance supplier's compliance program. Medicare Part B covers ambulance services only if the beneficiary's medical condition contraindicates another means of transportation. The medical necessity requirements vary depending on the status of the ambulance transport (*i.e.*, emergency transport vs. non-emergency transport). If the medical necessity requirement is met, Medicare Part B covers ambulance services when a beneficiary is transported:

- To a hospital, a critical access hospital (CAH), or a skilled nursing facility (SNF), from anywhere, including another acute care facility, or SNF;
- To his or her home from a hospital, CAH, or SNF;
- Round trip from a hospital, CAH, or SNF to an outside supplier to receive medically necessary therapeutic or diagnostic services; or
- To the nearest appropriate renal dialysis facility from his or her home.

1. Upcoding

Ambulance suppliers should be careful to bill at the appropriate level for services actually provided. The federal government has prosecuted a number of ambulance cases involving upcoding from BLS to ALS related to both emergency and non-emergency transports. In 1999, for example, an OIG investigation determined that an ambulance supplier was not only billing for ALS services when BLS services were provided, but the ambulance supplier did not employ an ALS-certified individual to perform the necessary ALS services. This supplier paid civil penalties and signed a five-year corporate integrity agreement (CIA).

2. Non-Emergency Transports

There have also been a number of Medicare fraud cases involving non-emergency transports (i) to non-covered destinations and (ii) that were not medically necessary. An OIG OEI report, issued in December 1998, found that a high number of non-emergency transports for which Medicare claims were submitted were medically unnecessary as defined by Medicare's criteria. Medicare's ambulance fee schedule identifies non-emergency transport as appropriate if (i) the beneficiary is bed-confined and his or her medical condition is such that other methods of transportation are contraindicated, or (ii) the beneficiary's medical condition, regardless of bed-confinement, is such that transportation by ambulance is medically required. The beneficiary's medical condition and the necessity for ambulance transportation must be documented. In determining whether a beneficiary is bed-confined, the following criteria must be met: (i) The beneficiary must be unable to get up from bed without assistance; (ii) the beneficiary must be unable to ambulate; and (iii) the beneficiary must be unable to sit in a chair or wheelchair (42 CFR 410.40 (d)). The fact that other modes of transportation may not be as readily available or as convenient does not justify coverage for ambulance transport for a beneficiary who does not meet Medicare's medical necessity requirements.

Under no circumstances should ambulance suppliers mischaracterize the condition of the patient at the time of transport in an effort to claim that the transport was medically necessary under Medicare coverage requirements. If it is unclear whether the service will be covered by Medicare, the ambulance supplier should nonetheless appropriately document the condition of the patient and maintain records of the transport.

3. Scheduled and Unscheduled Transports

Because of the potential for abuse in the area of non-emergency transports, Medicare has criteria for the coverage of non-emergency scheduled and unscheduled ambulance transports. For example, physician certification statements (PCS) should be obtained by an ambulance supplier to verify that the transport was medically necessary. The PCSs should provide adequate information on the transport provided for each individual beneficiary, and each PCS must be signed by an appropriate physician or other appropriate health care professional. Except for pre-signed PCSs for scheduled, repetitive ambulance transports, which can be valid for up to 60 days of transport service, pre-signed and/or mass produced PCSs are not acceptable because they increase the opportunity for abuse.

Medicare does not cover transports for routine doctor and dialysis appointments when beneficiaries do not meet the Medicare medical necessity requirements. Similarly, ambulance services that are rendered for convenience or because other methods of more appropriate transportation are not available do not meet Medicare's medical necessity requirements and claims for such services should not be submitted to Medicare for payment. For example, an ambulance supplier was required to pay over $1 million to the federal government and enter into a CIA with the OIG for billing for medically unnecessary ambulance trips and for non-covered ambulance trips to doctors' offices.

B. Documentation, Billing, and Reporting Risks

Currently, the HCFA 1491 or 1500 forms are the approved forms for requesting Medicare payment for ambulance services. Inadequate or faulty documentation is a key risk area for ambulance suppliers. The compilation of correct and accurate documentation (whether electronic or hard copy) is generally the responsibility of all the ambulance personnel, including the dispatcher who receives a request for transportation, the personnel transporting the patient, and the coders and billers submitting claims for reimbursement. When documenting a service, ambulance personnel should not make assumptions or inferences to compensate for a lack of information or contradictory information on a trip sheet, ACR, or other medical source documents.

To ensure that adequate and appropriate information is documented, an ambulance supplier should gather and record, at a minimum, the following:

- Dispatch instructions, if any;
- Reasons why transportation by other means was contraindicated;
- Reasons for selecting the level of service;
- Information on the status of the individual;
- Who ordered the trip;
- Time spent on the trip;
- Dispatch, arrival at scene, and destination times;
- Mileage traveled;
- Pickup and destination codes;
- Appropriate zip codes; and
- Services provided, including drugs or supplies.

1. Healthcare Common Procedure Coding System (HCPCS)

The appropriate HCPCS codes should be used when submitting claims for reimbursement. The HCPCS codes reported on the ambulance trip sheets or claim forms should be selected to describe most accurately the type of transport provided based on the patient's illness, injury, signs, or symptoms at the time of the ambulance transport. HCPCS codes should not be selected based on information relating to the patient's past medical history or prior conditions, unless such information also specifically relates to the patient's condition at the time of transport. Ambulance suppliers should use caution not to submit incorrect HCPCS codes on trip sheets or claims to justify reimbursement.

2. Origin/Destination Requirements—Loaded Miles

Medicare only covers transports for the time that the patient is physically in the ambulance. Effective January 1, 2001, ambulance suppliers must furnish the ''point of pickup'' zip code on each ambulance claim form. Under the new Medicare ambulance fee schedule, the point of pickup will determine the mileage payment rate. The ambulance supplier should document the address of the point of pickup to verify that the zip code is accurate.

The ambulance crew should accurately report the mileage traveled from the point of pickup to the destination. Medicare covers ambulance transports to the nearest available treatment facility. If the nearest facility is not appropriate (*e.g.*, because of traffic patterns or an inability to address the patient's condition), the beneficiary should be taken to the next closest appropriate facility. If a beneficiary requests a transport to a facility other than the nearest appropriate facility, the ambulance supplier should inform the patient that he or she may be responsible for payment of the additional mileage incurred.

3. Multiple Payors—Coordination of Benefits

Ambulance suppliers should make every attempt to determine whether Medicare, Medicaid, or other federal health care programs should be billed as the primary or as the secondary insurer. Claims for payment should not be submitted to more than one payor, except for purposes of coordinating benefits (*e.g.*, Medicare as secondary payor). Section 1862(b)(6) of the Act (42 U.S.C. 1395y(b)(6)) states that an entity that knowingly, willfully, and repeatedly fails to provide accurate information relating to the availability of other health benefit plans shall be subject to a civil money penalty (CMP).

The OIG recognizes that there are instances when the secondary payor is not known or cannot be determined before the ambulance transportation claim is submitted. This may be particularly true for ambulance suppliers that have incomplete insurance information from a transported patient. In such situations, if an ambulance supplier receives an inappropriate or duplicate payment, the payment should be refunded to the appropriate payor in a timely manner. Accordingly, ambulance suppliers should develop a system to track and quantify credit balances to return overpayments when they occur.

C. Medicare Part A Payment for ''Under Arrangements'' Services

In certain instances, SNFs, hospitals, or CAHs, may provide ambulance services ''under arrangements'' with an ambulance supplier. In such cases, the SNF, hospital, or CAH is the entity furnishing the transport. Accordingly, Medicare pays the SNF, hospital, or CAH for the service. The SNF, hospital, or CAH pays the ambulance supplier a contractually agreed amount. Ambulance suppliers that provide such transports ''under arrangements'' with a SNF, hospital, or CAH should not bill Medicare for these transports. All such arrangements should be carefully reviewed to ensure that there is no violation of the anti-kickback statute, as more fully described in section V.

IV. Medicaid Ambulance Coverage

The Medicaid program, a joint federal and state health insurance program, provides funds for health care providers and suppliers that perform or deliver medically necessary services for eligible Medicaid recipients. Each state establishes its own Medicaid regulations, which vary depending on the state plan. However, two federal regulations form the basis for all Medicaid reimbursement for transportation services and ensure a minimum level of coverage for transportation services. First, all states that receive federal Medicaid funds are required to assure transportation for Medicaid recipients to and from medical appointments (42 CFR 431.53). Second, federal regulations further define medical transportation and describe costs that can be reimbursed with Medicaid funds (42 CFR 440.170(a)).

In short, Medicaid often covers transports that are not typically covered by Medicare, such as transports in wheelchair vans, cabs, and ambulettes. However, the transports are subject to strict coverage and payment rules. The state Medicaid Fraud Control Units and federal law enforcement have pursued many fraud cases related to transportation services billed to Medicaid programs. Ambulance suppliers should review the Medicaid regulations governing their state or service territories to ensure that any billed services meet applicable Medicaid requirements.

V. Kickbacks and Inducements

A. What Is the Anti-Kickback Statute?

The anti-kickback statute prohibits the purposeful payment of anything of value (*i.e.*, remuneration) in order to induce or reward referrals of federal health care program business, including Medicare and Medicaid business.[12] (See section 1128B(b) of the Act (42 U.S.C. 1320a–7b).) It is a criminal prohibition that subjects violators to possible imprisonment and criminal fines. In addition, violations of the anti-kickback statute may give rise to CMPs and exclusion from the federal health care programs. Both parties to an impermissible kickback transaction may be liable: the party offering or paying the kickback, as well as the party soliciting or receiving it. The key inquiry under the statute is whether the parties intend to pay, or be paid, for referrals. Paying for referrals need not be the only or primary purpose of a payment; as courts have found, if any *one* purpose of the payment is to induce or reward referrals, the statute is violated. (See, *e.g.*, *United States* v. *Kats,* 871 F.2d 105 (9th Cir. 1989); *United States* v. *Greber,* 760 F.2d 68 (3d Cir.), *cert. denied,* 474 U.S. 988 (1985).) In short, an ambulance supplier should

neither make nor accept payments intended, in whole or in part, to generate federal health care program business.

B. What Are ''Safe Harbors''?

The department has promulgated ''safe harbor'' regulations that describe payment practices that do not violate the anti-kickback statute, provided the payment practice fits squarely within a safe harbor. The safe harbor regulations can be found at 42 CFR 1001.952 and on the OIG Web page at *http://oig.hhs.gov/fraud/safeharborregulations.html#1.* Compliance with the safe harbor regulations is voluntary. Thus, failure to comply with a safe harbor does not mean that an arrangement is illegal. Rather, arrangements that do not fit in a safe harbor must be analyzed under the anti-kickback statute on a case-by-case basis to determine if there is a violation. To minimize the risk under the anti-kickback statute, ambulance suppliers should structure arrangements to take advantage of the protection offered by the safe harbors whenever possible. Safe harbors that may be useful for ambulance suppliers include those for space rentals, equipment rentals, personal services and management contracts, discounts, employees, price reductions offered to health plans, shared risk arrangements, and ambulance restocking arrangements. (42 CFR 1001.952(b), (c), (d), (h), (i), (t), (u), and (v), respectively.)

C. What Is ''Remuneration'' for Purposes of the Statute?

Under the anti-kickback statute, ''remuneration'' means virtually anything of value. A prohibited kickback payment may be paid in cash or in kind, directly or indirectly, covertly or overtly. Almost anything of value can be a kickback, including, but not limited to, money, goods, services, free or reduced rent, meals, travel, gifts, and investment interests.

D. Who Are Referral Sources for Ambulance Suppliers?

Any person or entity in a position to generate federal health care program business for an ambulance supplier, directly or indirectly, is a potential referral source. Potential referral sources include, but are not limited to, governmental ''9–1–1'' or comparable emergency medical dispatch systems, private dispatch systems, first responders, hospitals, nursing facilities, assisted living facilities, home health agencies, physician offices, staff of any of the foregoing entities, and patients.

E. For Whom Are Ambulance Suppliers Sources of Referrals?

In some circumstances, ambulance suppliers furnishing ambulance services may be sources of referrals (*i.e.*, patients) for hospitals, other receiving facilities, and second responders. Ambulance suppliers that furnish other types of transportation, such as ambulette or van transportation, also may be sources of referrals for other providers of federal heath care program services, such as physician offices, diagnostic facilities, and certain senior centers. In general, ambulance suppliers—particularly those furnishing emergency services—have relatively limited abilities to generate business for other providers or to inappropriately steer patients to particular emergency providers.

F. How Can Ambulance Suppliers Avoid Risk Under the Anti-Kickback Statute?

Because of the gravity of the penalties under the anti-kickback statute, ambulance suppliers are strongly encouraged to consult with experienced legal counsel about any financial relationships involving potential referral sources. In addition, ambulance suppliers should review OIG guidance related to the anti-kickback statute, including advisory opinions, fraud alerts, and special advisory bulletins. Ambulance suppliers concerned about their existing or proposed arrangements may obtain binding advisory opinions from the OIG.

Ambulance suppliers should exercise common sense when evaluating existing or prospective arrangements under the anti-kickback statute. One good rule of thumb is that all arrangements for items or services should be at fair market value in an arms-length transaction not taking into account the volume or value of existing or potential referrals. For each arrangement, an ambulance supplier should carefully and accurately document how it has determined fair market value. As discussed further in appendix A.4, an ambulance supplier may not charge Medicare or Medicaid substantially more than its usual charge to other payors.

Ambulance suppliers should consult the safe harbor for discounts (42 CFR 1001.952(h)) when entering into arrangements involving discounted pricing. In most circumstances, ambulance suppliers who offer discounts to purchasers who bill federal programs must fully and accurately disclose the discounts on the invoice, coupon, or statement sent to purchasers and inform purchasers of the purchasers' obligations to report the discounts to the federal programs. Accurate and complete records should be kept of all discount arrangements.

Ambulance suppliers should exercise caution when selling services to purchasers who are also in a position to generate federal health care program business for ambulance suppliers (*e.g.*, SNFs or hospitals that purchase ambulance services for private pay and Part A patients, but refer Part B and Medicaid patients to ambulance suppliers). Any link or connection, whether explicit or implicit, between the price offered for business paid out of the purchaser's pocket and referrals of federal program business billable by the ambulance supplier will implicate the anti-kickback statute.

An ambulance supplier should not offer or provide gifts, free items or services, or other incentives of greater than nominal value to referral sources, including patients, and should not accept such gifts and benefits from parties soliciting referrals from the ambulance supplier. In general, token gifts used on an occasional basis to demonstrate good will or appreciation (*e.g.*, logo key chains, mugs, or pens) will be considered to be nominal in value.

G. Are There Particular Arrangements to Which Ambulance Suppliers Should Be Alert?

Ambulance suppliers should review the following arrangements with particular care. (This section is intended to be illustrative, not exhaustive, of potential areas of risk under the anti-kickback and beneficiary inducement statutes.)

1. Arrangements for Emergency Medical Services (EMS)

a. Municipal Contracts

Contracts with cities or other EMS sponsors for the provision of emergency medical services may raise anti-kickback concerns. Ambulance suppliers should not offer anything of value to cities or other EMS sponsors in order to secure an EMS contract. (In general, ambulance suppliers may provide cities or other municipal entities with free or reduced cost *EMS* for uninsured, indigent patients.) In addition, arrangements that cover both EMS and non-EMS ambulance business should be carefully scrutinized; conditioning EMS services on obtaining non-EMS business potentially implicates the anti-kickback statute. Absent a state or local law requiring a tie between EMS and non-EMS business, ambulance suppliers

contemplating such arrangements should consider obtaining an OIG advisory opinion. While cities and other EMS sponsors may charge ambulance suppliers amounts to cover the costs of services provided to the suppliers, they should not solicit inflated payments in exchange for access to EMS patients, including access to dispatch services under ''9–1–1'' or comparable systems.

A city or other political subdivision of a state (*e.g.*, fire district, county, or parish) may not require a contracting ambulance supplier to waive copayments for its residents, but it may pay uncollected, out-of-pocket copayments on behalf of its residents. Such payments may be made through lump sum or periodic payments, if the aggregate payments reasonably approximate the otherwise uncollected cost-sharing amounts. However, a city or other political subdivision that *owns and operates* its own ambulance service is permitted to waive cost-sharing amounts for its residents under a special CMS rule. (See CMS *Carrier Manual,* section 2309.4; CMS *Intermediary Manual,* section 3153.3A; see also, *e.g.*, OIG Advisory Opinion No. 01–10 and 01–11.)

b. Ambulance Restocking

Another common EMS arrangement involves the restocking of supplies and drugs used in connection with patients transported to hospitals or other emergency receiving facilities. These arrangements typically do not raise anti-kickback concerns. However, ambulance suppliers participating in such arrangements can eliminate risk altogether by complying with the ambulance restocking safe harbor at 42 CFR 1001.952(v). In general, the safe harbor requires that EMS restocking arrangements involving free or reduced price supplies or drugs be conducted in an open, public, and uniform manner, although hospitals may elect to restock only certain categories of ambulance suppliers (*e.g.*, nonprofits or volunteers). Restocking must be accurately documented using trip sheets, patient care reports, patient encounter reports, or other documentation that records the specific type and amount of supplies or drugs used on the transported EMS patient and subsequently restocked. The documentation must be maintained for 5 years. The safe harbor also covers fair market value restocking arrangements and government-mandated restocking arrangements. The safe harbor conditions are set forth with specificity in the regulations.

Wholly apart from anti-kickback concerns, ambulance stocking arrangements raise issues with respect to proper billing for restocked supplies and drugs. Payment and coverage rules are set by the health care program that covers the patient (*e.g.*, Medicare or Medicaid). To determine proper billing for restocked supplies or drugs, ambulance suppliers should consult the relevant program payment rules or contact the relevant payment entity. Under the Medicare program, in almost all circumstances the ambulance supplier—not the hospital—will be the party entitled to bill for the restocked supplies or drugs used in connection with an ambulance transport, even if they are obtained through a restocking program. However, under the ambulance fee schedule, supplies and drugs are included in the bill for the base rate and are not separately billable. Ambulance suppliers should consult with their payor to confirm appropriate billing during the new ambulance fee schedule transition period.

2. Arrangements With Other Responders

In many situations, it is common practice for a paramedic intercept or other first responder to treat a patient in the field, with a second responder transporting the patient to the hospital. In some cases, the first responder is in a position to influence the selection of the transporting entity. While fair market value payments for services actually provided by the first responder are appropriate, inflated payments by ambulance suppliers to generate business are prohibited, and the government will scrutinize such payments to ensure that they are not disguised payments to generate calls to the transporting entity.

3. Arrangements With Hospitals and Nursing Facilities

Because hospitals and nursing facilities are key sources of non-emergency ambulance business, ambulance suppliers need to take particular care when entering into arrangements with such institutions. (See section F above.)

4. Arrangements With Patients

Arrangements that offer patients incentives to select particular ambulance suppliers may violate the anti-kickback statute, as well as the CMP law that prohibits giving inducements to Medicare and Medicaid beneficiaries that the giver knows, or should know, are likely to influence the beneficiary to choose a particular practitioner, provider, or supplier of items or services payable by Medicare or Medicaid. (See section 1128A(a)(5) of the Act (42 U.S.C. 1320a-7a(a)(5).) Prohibited incentives include, without limitation, free goods and services and copayment waivers. The statute contains several narrow exceptions, including financial hardship copayment waivers and incentives to promote the delivery of preventive care services as defined in regulations. In addition, items or services of nominal value (less than $10 per item or service or $50 in the aggregate annually) and any payment that fits into an anti-kickback safe harbor are permitted.

An ambulance supplier should not routinely waive federal health care program copayments (*e.g.*, no ''insurance only'' billing), although the supplier may waive a patient's copayment if it makes a good faith, individualized assessment of the patient's financial need.(16) Financial hardship waivers may not be routine or advertised. As discussed in section G above, cities and other political subdivisions are permitted to waive copayments for services provided directly to their residents.

Subscription or membership programs that offer patients purported coverage only for the ambulance supplier's services are also problematic because such programs can be used to disguise the routine waiver of cost-sharing amounts. To reduce their risk under the anti-kickback statute, ambulance suppliers offering subscription programs should carefully review them to ensure that the subscription or membership fees collected from subscribers or members, in the aggregate, reasonably approximate—from an actuarial or historical perspective—the amounts that the subscribers or members would expect to spend for cost-sharing amounts over the period covered by the subscription or membership agreement.

VI. Conclusion

This ambulance compliance program guidance is intended as a resource for ambulance suppliers to decrease the incidence of fraud and abuse as well as errors that might occur due to inadequate training or inadvertent noncompliance. We encourage ambulance suppliers to scrutinize their internal practices to ensure the development of a comprehensive compliance program.

Compliance programs should reflect each ambulance supplier's individual and unique circumstances. It has been the OIG's experience that those health care providers and suppliers that have developed compliance programs not only better understand applicable federal health care program requirements, but also their own internal operations. We are hopeful that

this guidance will be a valuable tool in the development and continuation of ambulance suppliers' compliance programs.

Appendix A—Additional Risk Areas

1. ''No Transport'' Calls and Pronouncement of Death

If an ambulance supplier responds to an emergency call, but a patient is not transported due to death, three Medicare rules apply. If an individual is pronounced dead prior to the time the ambulance was requested, there is no payment. If the individual is pronounced dead after the ambulance has been requested, but before any services are rendered, a BLS payment will be made and no mileage will be paid. If the individual is pronounced dead after being loaded into the ambulance, the same payment rules apply as if the beneficiary were alive. Ambulance suppliers should accurately represent the time of death and request payment based on the aforementioned criteria.

2. Multiple Patient Transports

On occasion, it may be necessary for an ambulance to transport multiple patients concurrently. If more than one patient is transported concurrently in one ambulance, the amount billed should be consistent with the multiple transport guidelines established by the payor in that region. Under CMS's new fee schedule rules for multiple transports, Medicare will pay a percentage of the payment allowance for the base rate applicable to the level of care furnished to the Medicare beneficiary (*e.g.*, if two patients are transported simultaneously, 75 percent of the applicable base rate will be reimbursed for each of the Medicare beneficiaries). Coinsurance and deductible amounts will apply to the prorated amounts.

3. Multiple Ambulances Called to Respond to Emergency Call

On occasion, more than one ambulance supplier responds to an emergency call and is present to transport a beneficiary. These are often referred to as ''dual transports.'' In such cases, only the transporting ambulance supplier may bill Medicare for the service provided. If payment is desired for services provided to a patient, the non-transporting ambulance company should receive it directly from the transporting supplier based on a negotiated arrangement. These payments should be fair market value for services actually rendered by the non-transporting supplier, and the parties should review these payment arrangements for compliance with the anti-kickback statute. On occasion, when multiple ambulance crews respond to a call, a BLS ambulance may provide the transport, but the level of services provided may be at the ALS level. If a BLS supplier is billing at the ALS level because of services furnished by an additional ALS crew member, appropriate documentation should accompany the claim to indicate to the payor that dual transportation was provided. In any event, only one supplier may submit the claim for payment.

4. Billing Medicare ''Substantially in Excess'' of Usual Charges

Ambulance suppliers generally may not charge Medicare or Medicaid patients substantially more than they usually charge everyone else. If they do, they are subject to exclusion by the OIG. This exclusion authority is not implicated unless the supplier's charge for Medicare or Medicaid patients is substantially more than its median non-Medicare/Medicaid charge. In other words, the supplier need not worry unless it is discounting close to half of its non-Medicare/Medicaid business. Ambulance suppliers should review charging practices with respect to Medicare and Medicaid billing to ensure that they are not charging Medicare or Medicaid substantially more than they usually charge other customers for comparable services. It is appropriate for an ambulance supplier to determine its usual charge with reference to its total charges to non-Medicare/Medicaid customers for an ambulance transport (whether or not the charges are structured as base rate plus mileage or otherwise) and then to compare the resulting ''usual charge'' to its total charge to Medicare (*i.e.*, base rate plus mileage) or Medicaid for comparable transport.

Appendix B—OIG/HHS Information

The OIG's web site (http://oig.hhs.gov) contains various links describing the following: (1) Authorities and **Federal Register** Notices, (2) Publications, (3) Reports, (4) Hearing Testimony, (5) Fraud Prevention and Detection, (6) Reading Room, (7) OIG Organization and (8) Employment Opportunities. Such information is frequently updated and is a useful tool for ambulance providers seeking additional OIG resources.

Also listed on the OIG's web site is the OIG Hotline Number. One method for providers to report potential fraud, waste and abuse is to contact the OIG Hotline number. All HHS and contractor employees have a responsibility to assist in combating fraud, waste, and abuse in all departmental programs. As such, providers are encouraged to report matters involving fraud, waste and mismanagement in any departmental program to the OIG. The OIG maintains a hotline that offers a confidential means for reporting these matters.

Contacting the OIG Hotline

By Phone: 1–800–HHS–TIPS (1–800–447–8477).

By Fax: 1–800–223–8164.

By E-Mail: *Htips@oig.hhs.gov.*

By TTY: 1–800–377–4950.

By Mail: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW., Washington, DC 20201.

When contacting the hotline, please provide the following information to the best of your ability:

—Type of Complaint: Medicare Part A
Medicare Part B
Indian Health Service
TRICARE
Other (please specify)

—HHS department or program being affected by your allegation of fraud, waste, abuse/mismanagement: Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration) Indian Health Service Other (please specify)

—Please provide the following information (however, if you would like your referral to be submitted anonymously, please indicate such in your correspondence or phone call): Your Name
Your Street Address
Your City/County
Your State
Your Zip Code
Your E-mail Address

—Subject/Person/Business/Department that allegation is against: Name of Subject
Title of Subject
Subject's Street Address
Subject's City/County
Subject's State
Subject's Zip Code

—Please provide a brief summary of your allegation and the relevant facts.

Appendix C—Carrier Contact Information

1. Medicare

A complete list of contact information (address, phone number, e-mail address) for Medicare Part A Fiscal Intermediaries, Medicare Part B Carriers, Regional Home Health Intermediaries, and Durable Medical Equipment Regional Carriers can be found on the CMS Web site at *http://cms.hhs.gov/contacts/incardir.asp.*

2. Medicaid

Contact information (address, phone number, e-mail address) for each state Medicaid director can be found on the CMS Web site at *http://cms.hhs.gov/medicaid/mcontact.asp.* In addition to a list of state Medicaid directors, the Web site includes contact information for each state survey agency and the CMS Regional Offices.

3. Ambulance Fee Schedule

Information related to the development of the ambulance fee schedule is located at *http://cms.hhs.gov/suppliers/afs/default.asp.*

Appendix D—Internet Resources

1. Centers for Medicare and Medicaid Services

The CMS Web site (*http://cms.hhs.gov/*) includes information on a wide array of topics, including Medicare's National Coverage Database, National Coverage Policies, Laws and Regulations and State Waiver and Demonstration Programs. In addition, this Web site contains information related to Medicaid including a General Medicaid Overview, State and Federal Health Program Contacts, State Medicaid Manual, State Medicaid Plans, State Waivers and Demonstration Programs, Letters to State Officials, and CMS Publications.

2. CMS Medicare Training

This CMS Web site (*http://www.cms.hhs.gov/medlearn/cbts.asp*) provides computer-based training related to CMS's purpose and history, the three types

of Medicare coverage, the roles agencies and contractors play, and the claims handling process.

3. Government Printing Office (GPO)

The GPO Web site (*http://www.access.gpo.gov*) provides access to federal statutes and regulations pertaining to federal health care programs.

4. The U.S. House of Representatives Internet Library

The U.S. House of Representatives Internet Library Web site (*http://.uscode.house.gov/usc.htm*) provides access to the United States Code, which contains laws pertaining to federal health care programs.

Endnotes:

1. To date, the OIG has issued compliance program guidance for the following nine industry sectors: (1) Hospitals; (2) clinical laboratories; (3) home health agencies; (4) durable medical equipment suppliers; (5) third-party medical billing companies; (6) hospices; (7) Medicare+Choice organizations offering coordinated care plans; (8) nursing facilities; and (9) individual and small group physician practices. The guidances listed here and referenced in this document are available on the OIG Web site at *http://oig.hhs.gov* in the Fraud Prevention and Detection section.

2. The CMS's final ambulance fee schedule rule was published in the **Federal Register** on February 27, 2002 (67 FR 9100) and went into effect on April 1, 2002.

3. The term ''universe'' is used in this CPG to mean the generally accepted definition of the term for purposes of performing a statistical analysis. Specifically, the term ''universe'' means the total number of sampling units from which the sample was selected.

4. The OIG encourages that providers/suppliers police themselves, correct underlying problems, and work with the government to resolve any problematic practices. The OIG's Provider Self-Disclosure Protocol, published in the **Federal Register** on October 30, 1998 (63 FR 58399), sets forth the steps, including a detailed audit methodology, that may be undertaken if suppliers wish to work openly and cooperatively with the OIG. The Provider Self-Disclosure Protocol is open to all health care providers and other entities and is intended to facilitate the resolution of matters that, in the provider's reasonable assessment, may potentially violate federal criminal, civil, or administrative laws. The Provider Self-Disclosure Protocol is not intended to resolve simple mistakes or overpayment problems. The OIG's Self-Disclosure Protocol can be found on the OIG Web site at *http://oig.hhs.gov.*

5. Ambulance suppliers should read the OIG's September 1999 Special Advisory Bulletin, entitled ''The Effect of Exclusion From Participation in the Federal Health Care Programs,'' published in the **Federal Register** on October 7, 1999 (64 FR 58851), which is located at *http://oig.hhs.gov/frdalrt*, for more information regarding excluded individuals and entities and the effect of employing or contracting with such individuals or entities.

6. OEI–09–95–00412, available on the OIG's Web site at *http://oig.hhs.gov/oei.*

7. CMS Program Memorandum B–00–09 describes different options for ambulance suppliers having difficulty obtaining PCSs. (See 42 CFR 410.40(d)(3)(iii) and (iv).) A PCS is not required, for beneficiaries who are not under the direct care of a physician, whether the beneficiary resides at home or in a facility. Id. Section 410.40(d)(3)(ii).

8. 42 CFR 410.42(d).

9. On December 28, 2000, the Department of Health and Human Services (HHS) released its final rule implementing the privacy provisions of the Health Insurance Portability and Accountability Act of 1996. The rule became effective in April 2001, and regulates access, use, and disclosure of personally identifiable health information by covered entities (health providers, plans, and clearinghouses). Guidance on an ambulance supplier's compliance with the HHS Privacy Regulations is beyond the scope of this CPG; however, it will be the responsibility of ambulance suppliers to comply. Most health plans and providers must comply with the rule by April 14, 2003. In the meantime, many organizations are considering and analyzing the privacy issues.

10. Loaded miles refers to the number of miles that the patient is physically on board the ambulance.

11. HCFA Program Memorandum Transmittal AB–00–118, issued on November 30, 2000.

12. In addition to Medicare and Medicaid, the federal health care programs include, but are not limited to, TRICARE, Veterans Health Care, Public Health Service programs, and the Indian Health Services.

13. The procedures for applying for an advisory opinion are set forth at 42 CFR part 1008. and on the OIG Web page at *http://www.oig.hhs.gov/fraud/advisoryopinions.html#3.* All OIG advisory opinions are published on the OIG web page. A number of published opinions involving ambulance arrangements provide useful guidance for ambulance suppliers. These include OIG Advisory Opinions Nos. 97–6, 98–3, 98–7, 98–13, 99–1, 99–2, 99–5, 00–7, 00–9, 00–11, 01–10, 01–11, 01–12, 01–18, 02–2, 02–3, 02–8, and 02–15. Other advisory opinions not specifically involving ambulance arrangements may also provide useful guidance.

14. See 65 FR 24400; April 26, 2000.

15. See Special Advisory Bulletin: Offering Gifts and Other Inducement to Beneficiaries, located on the OIG Web page at *http://www.oig.hhs.gov/fraud/fraudalerts.html#2.*

16. See Special Fraud Alert: Routine Waiver of Copayments or Deductibles Under Medicare Part B (59 FR 65372, 65374 (1994)), located on the OIG Web page at *http://www.oig.hhs.gov/fraud/fraudalerts.html#1.*

17. The OIG may exclude from participation in the federal health care programs any provider that submits or causes to be submitted bills or requests for payment (based on charges or costs) under Medicare or Medicaid that are substantially in excess of such providers' usual charges or costs, unless the Secretary finds good cause for such bills or requests. (See section 1128(b)(6) of the Act (42 U.S.C. 1320a–7(b)(6)).)

Dated: February 14, 2003.

Janet Rehnquist,

Inspector General.

[FR Doc. 03–6866 Filed 3–21–03; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: National Cross-Site Assessment of the Addiction Technology Transfer

Centers Network—(OMB No. 0930–0216, Revision—The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to continue an assessment of its Addiction Technology Transfer Centers (ATTCs). The data collection instruments are being modified, and the methodology will be updated to comply with CSAT's new Government Performance and Results Act (GPRA) requirements. CSAT is requiring all of its programs to use standard GPRA Customer Satisfaction forms for training, technical assistance and meeting events, approved by OMB under OMB control number 0930–0197. In response to these new requirements, the ATTC Network will modify the

current evaluation tools to be in compliance, while still collecting information needed for the cross-site assessment.

The goal underlying the training and education opportunities provided through the ATTCs is to enhance the competencies of professionals in a variety of disciplines to address the clinical needs of individuals with substance abuse problems using research-based curricula and training materials through both traditional and non-traditional technologies.

The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources and applied knowledge development activities from SAMHSA using innovative technologies by developing and updating state-of-the-art research-based curricula and developing faculty and trainers. Participants in ATTC events are self-identified and participate in either academic courses, continuing education/professional development training events, technical assistance or meetings. Academic courses are offered at all levels. Continuing education/professional development training is designed to meet identified needs of counselors and other professionals who work with individuals with substance abuse problems. A technical assistance is a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. A meeting is an ATTC sponsored or co-sponsored event in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy.

Both a process and an outcome assessment will be conducted. The process component will describe the training and education needs of pre-service and currently practicing professionals, the types of events that participants receive through the ATTCs, and their satisfaction with services. The outcome component will focus on changes in clinical practice made by participants as a result of knowledge received.

Analysis of this information will assist CSAT in documenting the numbers and types of participants in ATTC events, describing the extent to which participants improve in their clinical competency, and which method is most effective in disseminating knowledge to the various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The study design for trainees will include a description of each event, and a pre-post design that collects identical information at initiation of ATTC courses/trainings, at the completion of the course/training, and again after 30 days. For technical assistance and meeting events, there will be a description of each event and demographic information will be collected from participants before the event. In addition, the study will collect satisfaction measures after each event and at 30-day follow-up using the required GPRA forms. Follow-up forms will be sent to a sample of 25% of participants at events. The chart below summarizes the annualized burden for this project.

Respondent type	Number of respondents	Average responses/ respondent	Average Hours/ response	Total burden hours
Students/Trainees	20,000	3	.25	15,000
Faculty/Trainers	200	1	.25	50
ATTC Summary Reports	15	4	2.00	120
Total	20,215	.....	.....	15,170

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 18, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–6895 Filed 3–21–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Registration Form for the National Registry of Effective Prevention Programs—(OMB No. 0930–0210; Revision)—Section 515(d) of the Public Health Service Act (42 U.S.C. 290bb-21) requires that the Director of SAMHSA's Center for Substance Abuse Prevention (CSAP) establish a national data base providing information on programs for the prevention of substance abuse and specifies that the data base shall contain information appropriate for use by public entities and information appropriate for use by nonprofit private entities. Beginning in 1994, CSAP met this responsibility through the High Risk Populations Databank on programs for the prevention of substance abuse funded by direct CSAP grants. In 2000 CSAP expanded its information collection to include voluntary submission of descriptions of effective substance abuse prevention conducted by state and local governments, nonprofit entities, and the private sector.

CSAP has developed a template, accessed through a dedicated site on the World Wide Web, to enable practitioners who have evidence that their program reduces risk factors or increases protective factors pertaining to

substance abuse to nominate their own standardized program for the Registry. Each program that is nominated should have been standardized (including curriculum manuals, implementation manuals, videotapes, etc.), well implemented, and findings should derive from well designed research efforts. Program models nominated are reviewed and rated by experts annually to be recommended to the field. CSAP is revising the Registration Form by eliminating collection of information pertaining to the National Prevention System.

CSAP promotes selected models by providing funds to support development of program materials for dissemination, by connecting program developers with organizations able to help in the dissemination efforts, and by promoting model programs nationally through CSAP's State Incentive Grant recipients and regional Centers for Applied Prevention Technology. Annual burden estimates for the Registry are shown in the table below.

Type of submission	Number of respondents	Responses/ respondent	Hours/ response	Total burden hours
Complete	60	1	.90	54
Abbreviated	8	1	.25	2
Total	68			56

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: March 18, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–6896 Filed 3–21–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Annual Census of Patient Characteristics in State and County

Mental Hospital Inpatient Services (0930–0093, Extension)—The Census, which is conducted by SAMHSA's Center for Mental Health Services (CMHS), is a complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, race/ethnic identity and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within CMHS for assessing de-institutionalization practices of State and county mental hospitals. The annual burden estimate is shown in the table below.

	Number of respondents	Responses/ respondent	Burden/ response (Hrs.)	Annual burden (Hrs.)
State Statisticians and Superintendents of State Mental Hospitals	52	1	2	104

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 18, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Service Administration.

[FR Doc. 03–6897 Filed 3–21–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Approval Procedures for Nontoxic Shot and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A summary of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before May 23, 2003.

ADDRESSES: Send your comments on the information collection to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22207.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record-keeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the nontoxic shot and shot coating approval process. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0067.

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities include approval of nontoxic shot materials for use in hunting waterfowl and coots in the United States.

As of January 1, 1991, lead shot was banned for hunting waterfowl and coots in the United States. At that time, steel shot was the only nontoxic alternative available. Since then, we have encouraged manufacturers to develop other alternatives that the hunting public may use. In approving a candidate material as nontoxic for hunting waterfowl and coots, we must first ensure that secondary exposure (ingestion of spent shot or its components) is not a hazard to migratory birds and the environment. In order to make this decision, we require the applicant to collect information about the toxicity of their candidate material to migratory birds and the environment. A further requirement pertains to law enforcement. A noninvasive field detection device must be available to distinguish the candidate shot from lead shot. The above information provides the bulk of an application for approval of nontoxic shot material. Once a candidate material is approved as nontoxic, there is no seasonal or annual information collection requirement.

Title: Approval Procedures for Nontoxic Shot and Shot Coatings.

Approval Number: 1018–0067.

Service Form Number: Not applicable.

Frequency of Collection: Occasional (upon application).

Description of Respondents: Shot manufacturers.

Total Annual Responses: We expect no more than 1 application per year.

Total Annual Burden Hours: The reporting burden is estimated to average 3,200 hours per application. Therefore, if we receive 1 application per year, the total annual burden hours would amount to 3,200 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: March 18, 2003.

Paul R. Schmidt,

Assistant Director Migratory Birds and State Programs.

[FR Doc. 03–6870 Filed 3–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 2004

AGENCY: Geological Survey, Department of the Interior.

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the NEHRP.

The purpose of the USGS Earthquake Hazards Program is to provide products for earthquake loss reduction to the public and private sectors and by carrying out research on earthquake occurrence and effects.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of state and local governments.

ADDRESSES: The program announcement is expected to be available on or about March 24, 2003. You may obtain a copy of Announcement No. 04HQPA0001 from the USGS Contracts and Grants Information site at *http://www.usgs.gov/contracts/nehrp/* or by writing to Kimberly Dove, U.S. Geological Survey, Office of Acquisition and Grants—Mail Stop 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (703) 648–7901.

DATES: The closing date for receipt of applications will be on or about May 1, 2003. The actual closing date will be specified in Announcement No. 04HQPA0001.

FOR FURTHER INFORMATION CONTACT: John Unger, Earthquake Hazards Reduction Program—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone: (703) 648–6701.

SUPPLEMENTARY INFORMATION: Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95–124 (42 U.S.C. 7701 *et seq.*). The Office of Management and Budget Catalog of Federal Domestic Assistance Number is 15.807.

This program announcement is being issued in accordance with the Paperwork Reduction Act Statement. OMB No. 1028–0051 expiration date: November 30, 2003.

Notice—This will be the last year that the National Earthquake Hazards Reduction Program (NEHRP) will be posted in the **Federal Register**. Future notices will be posted at the

Governmentwide grant opportunities board at *http://fedgrants.gov.*

Dated: March 7, 2003.

Carol F. Aten,

Chief, Office of Administrative Policy and Services.

[FR Doc. 03–6889 Filed 3–21–03; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Black Canyon of the Gunnison National Park

SUMMARY: This notice announces a revision to the boundary of Black Canyon of the Gunnison National Park to include one parcel of land owned by Ellouise Sanburg, Trustee, and Sanburg Herefords, L.L.L.P. The National Park Service has determined that this boundary revision is necessary for the preservation and protection of the National Park.

DATES: The effective date of this Notice is the date in which it appears in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Superintendent, Black Canyon of the Gunnison National Park, at 102 Elk Creek, Gunnison, Colorado, 81230 or by telephone at 970–641–2337.

SUPPLEMENTARY INFORMATION: Section 7 (c) of the Land and Water Conservation Fund Act of 1965, 16 U.S.C. 4601–9(c)(1), as amended by section 814(b) of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333), authorizes the Secretary of the Interior to make this boundary revision. This action will add one parcel of land comprised of 198.5 acres of land to the Black Canyon of the Gunnison National Park. The National Park Service proposes to purchase a conservation easement on this parcel. It is located outside the park boundary in the vicinity of Red Rock Canyon north of Bostwick Park Road. The acquisition of the conservation easement is required to maintain the present rural agricultural character of the land in the vicinity of the proposed Red Rock Trailhead.

The above parcel is depicted as tract number 01–152 on land acquisition segment map 01, having drawing number 144–92004, dated August 6, 2002. This map is on file at the National Park Service, Land Resources Program Center, Intermountain Region, Santa Fe, New Mexico, and at the Office of the Superintendent of the Black Canyon of the Gunnison National Park.

Dated: December 13, 2002.

Karen P. Wade,

Director, Intermountain Region.

[FR Doc. 03–6961 Filed 3–21–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Museum of African American History and Culture Plan for Action Presidential Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix, that the National Museum of African American History and Culture Plan for Action Presidential Commission will meet March 24 and 25, 2003, in the Atrium Ballroom of The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC. On March 24, the Commission will convene at 8 a.m., e.s.t., and adjourn at 5:15 p.m., e.s.t. March 25, the Commission will convene at 8 a.m., e.s.t., and adjourn at 1:30 p.m., e.s.t.

On March 24, the Commission will receive and deliberate reports from its Executive Committee and Committees on Mission, Role and Vision with Program and Collections; Site and Building; Governance and Organization; Fundraising, Finance and Budget; and Legislation and Public Relations.

On March 25, the Commission will consider procedural matters relative to completing its report to the President and the Congress.

Due to the unexpected cancellation of the original meeting space and the additional time required to make alternate arrangements, this notice could not be published at least 15 days prior to the meeting date. The National Park Service regrets this delay, but is compelled to hold the meeting as scheduled because of the significant sacrifice rescheduling would require of Board members who have adjusted their schedules to accommodate the proposed meeting date.

The Commission meeting is open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed in this notice at least two weeks (2 weeks) before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Commission a written statement concerning the establishment of the National Museum for African American History and Culture. The Commission may also permit attendees to address the assembled Commission, but may restrict the length of the presentations, as necessary to allow the Commission to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact George S. McDonald, Project Manager, National Museum of African American History and Culture Plan for Action Presidential Commission, National Park Service, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–4227.

Draft minutes of the meeting will be available for public inspection approximately 12 weeks after the meeting, in room 2012, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: March 5, 2003.

George S. McDonald,

Project Manager, Staff to the National Museum of African American History and Culture Plan for Action Presidential Commission.

[FR Doc. 03–6881 Filed 3–21–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. chap. 35), requesting extension of a currently approved collection (OMB No.: 3117–0190).

EFFECTIVE DATE: March 27, 2003.

Purpose of Information Collection: The requested extension of a currently approved collection (USITC DataWeb user registration form) is for use by the Commission. The user registration form is required to accurately track usage, data reports generated, and costs by user sectors. The form would appear on the ITC DataWeb Internet site (*http://dataweb.usitc.gov*) and would need to be filled out only once.

Public Comments Regarding the Information Collection: OMB is required to make a decision concerning extension of this currently approved collection between 30 and 60 days after publication of this notice. To be assured of consideration, comments must be received not later than 30 days after publication of this notice, at OMB by the Desk Officer/USITC.

Summary of Proposal: (1) *Number of forms submitted:* One. (2) *Title of forms:* ITC Tariff and Trade DataWeb: ''Create New User Account Form''. (3) *Type of request:* Extension. (4) *Frequency of use:* Single data gathering. (5) *Description of respondents:* Government and private sector users of the on-line ITC DataWeb. (6) *Estimated number of respondents:* 10,000 new users annually. (7) *Estimated total number of minutes to complete the forms:* 2.0 minutes. (8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the survey and draft Supporting Statement submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at *http://www.usitc.gov* or the agency submissions to OMB in connection with this request may be obtained from Peg MacKnight, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 (telephone no. 202–205–3418). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–3897). Copies of any comments should also be provided to Robert Rogowsky, Director of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

Issued: March 18, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6941 Filed 3–21–03; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Final)]

Silicon Metal From Russia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Russia of silicon metal,[3] provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to imports of silicon metal from Russia that are subject to Commerce's affirmative critical circumstances determination.

Background

The Commission instituted this investigation effective March 7, 2002, following receipt of a petition filed with the Commission and Commerce by Globe Metallurgical Inc., Cleveland, OH; SIMCALA, Inc., Mt. Meigs, AL; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (I.U.E.–C.W.A, AFL–CIO, C.L.C., Local 693), Selma, AL; the Paper, Allied-Industrial Chemical and Energy Workers International Union (Local 5–89), Boomer, WV; and the United Steel Workers of America (AFL–CIO, Local 9436), Niagara Falls, NY. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of silicon metal from Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 30, 2002 (67 FR 61351). The hearing was held in Washington, DC, on February 5, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 19, 2003. The views of the Commission are contained in USITC Publication 3584 (March 2003), entitled Silicon Metal from Russia: Investigation No. 731–TA–991 (Final).

Issued: March 18, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6942 Filed 3–21–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Okun did not participate in this investigation.

[3] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight.''

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0215(2003)]

Standards on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I); Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend the Office of Management and Budget's (OMB) approval of the information-collection requirements contained in its Standards on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I).[1] The Standards require

[1] Based on its assessment of the paperwork requirements contained in these Standards, the

employers to provide and ensure that each affected employee uses the appropriate personal protective equipment (PPE) for the eyes, face, head, extremities, torso, and respiratory system, including protective clothing, protective shields, protective barriers, personal fall-protection equipment, and life-saving equipment that meets the applicable provisions of this subpart whenever employees are exposed to hazards that require the use of PPE.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 23, 2003.

Facsimile and electronic transmission: Your comments must be sent by May 23, 2003.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0215(2003), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the collections of information specified by the Standards on Personal Protective Equipment for Shipyard Employment is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select "*Information Collection Requests.*"

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The collections of information in the standard are necessary for implementation of the requirements of the Standards. The Standards specify several paperwork requirements. The following sections describe the information-collection requirements, and who will use the information.

(A) *Hazard Assessment And Equipment Selection (1915.152(b)).* Paragraph 1915.152(b) requires the employer to assess work activities to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. If such hazards are present, or likely to be present, the employer must: (1) Select the type of PPE that will protect the affected employee from the hazards identified in the occupational-hazard assessment; (2) communicate selection decisions to affected employees; (3) select PPE that properly fits each affected employee; and (4) verify that the required occupational hazard assessment has been performed through a document that contains the following information: Occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

(B) *Verification That Hazard Assessment Has Been Performed (1915.152(d)(4)).* Paragraph 1915.152(e)(4) requires that the employer verify that each affected employee has received the PPE training through a document that contains the following information: Name of each employee trained, the date(s) of training, and the type of training the employee received.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, 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.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimates, and to extend OMB's approval of the collection-of-information requirements specified in the Standards on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I). The net reduction of 213 hours results from a 292-hour increase to account for the 165 newly identified firms to conduct an initial hazard assessment, and a reduction of 505 hours to reflect that employers do not spend 2 minutes per employee disclosing training verification records to OSHA; rather employers spend 2 minutes per inspection disclosing the necessary training verification records.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I).

OMB Number: 1218–0215.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal Governments.

Number of Respondents: 665.

Frequency of Recordkeeping: On occasion.

Average Time Per Response: Varies from one minute (.02 hour) to maintain training documentation to 6 hours to perform a hazard assessment.

Total Annual Hours Requested: 2,042.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 18, 2003.

John L. Henshaw.

Assistant Secretary of Labor.

[FR Doc. 03–6943 Filed 3–21–03; 8:45 am]

BILLING CODE 4510–26–M

Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is not proposing to revise the Standards' paperwork requirements, only to decrease the burden-hour estimates imposed by the existing paperwork requirements.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0205(2003)]

Standard on Personal Protective Equipment (PPE) for General Industry (29 CFR Part 1910, Subpart I); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden hour estimates; and to extend OMB approval of the information-collection requirements of the Personal Protective Equipment (PPE) for General Industry Standard (29 CFR part 1910, subpart 1).[1] The Standard requires employers to provide and ensure that each affected employee uses the appropriate personal protective equipment (PPE) for the eyes, face, head, extremities, torso, and respiratory system, including protective clothing, protective shields, protective barriers, personal fall protection equipment, and life saving equipment, meeting the applicable provisions of this subpart, wherever employees are exposed to work activity hazards that require the use of PPE.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 23, 2003.

Facsimile and electronic transmission: Your comments must be received by May 23, 2003.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0205(2003), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the collections of information collection specified by the Standard on Personal Protective Equipment for General Industry is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information collection burden is correct.

The collections of information in the standard are necessary for implementation of the requirements of the standard. The Standard specifies several paperwork requirements. The following sections describe the information collection requirements and who will use the information.

Paragraph 1910.132(d) requires employers to perform a hazard assessment of the workplace to determine if personal protective equipment (PPE) is necessary. Paragraph (d)(2) requires employers to certify that a hazard assessment has been performed. The signed certification must include the date the hazard assessment was conducted and the identification of the workplace evaluated (area or location).

Paragraph 1910.132(f)(4) requires employers to certify that employees have received and understood PPE training. The training certification must include the name of the employee(s) trained, the date of training, and the subject of the certification (i.e., a statement identifying the document as a certification of training in the use of PPE).

The hazard assessment assures that the PPE selected is appropriate for the hazards present in the workplace. The certification required with the hazard assessment verifies that the hazard assessment was conducted. The training certification verifies that employees have received the necessary training involving PPE. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, 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.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimates, and to extend OMB approval of the collection of information requirements specified by the Standard on Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910, subpart I). The 1,122,417 million hour decrease results largely by reestimating the burden hours for employers to disclose certification of PPE training records.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of a currently approved information collection requirement.

Title: Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910, subpart I).

OMB Number: 1218–0205.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, Local or Tribal Government.

Number of Respondents: 1,100,000.

Frequency of Recordkeeping: Varies depending upon the collection of information contained in the Standard.

Average Time per Response: Varies from one minute (.02 hour) to maintain training documentation to 1 hour to perform a hazard reassessment.

Total Annual Hours Requested: 711,862.

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is not proposing to revise the Standard's paperwork requirements; only to decrease the burden hour estimates imposed by the existing paperwork requirements.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 18, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–6944 Filed 3–21–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–033]

Notice of Availability of NASA's Annual Report on Its Alternative Fuel Vehicle (AFV) Acquisitions for Fiscal Year 2002

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: Under the Energy Policy Act of 1992 (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order 13149 (April 2000), ''Greening the Government Through Federal Fleet and Transportation Efficiency,'' NASA's annual AFV reports are available on the following NASA Web site: *www.hq.nasa.gov/office/codej/codejlg/afv.htm.*

ADDRESSES: Logistics Management Office, NASA Headquarters, Code JG, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: William Gookin, (202) 358–2306, or *wgookin@hq.nasa.gov.*

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 03–6913 Filed 3–21–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

National Commission on Terrorist Attacks Upon the United States; Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its first public hearings on March 31 and April 1, 2003, in New York City. Public officials, representatives of 9/11 families, and other invited expert witnesses will testify. Representatives of the media are encouraged to register with the Commission in advance of the hearing. Seating for the general public will be on first come, first served basis.

DATES: March 31, 9 a.m.–4 p.m.; April 1, 9 a.m. to 3 p.m.

ADDRESSES: The Customs House, 1 Bowling Green, New York, NY 10001.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg (202) 236–4878 and (202) 331–4077.

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (legislative creating the Commission), and the Commission's Web site: *www.9–11Commission.gov.*

Dated: March 19, 2003.

Tracy J. Shycoff,

Director of Administration and Finance.

[FR Doc. 03–6924 Filed 3–21–03; 8:45 am]

BILLING CODE 8800–01–M

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meeting (Teleconference)

AGENCY: National Council on Disability (NCD)

Time and Date: 1 p.m. e.d.t., April 18, 2003.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

Agenda: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: March 18, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–6909 Filed 3–21–03; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 148th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on April 11, 2003 from 9 a.m.–1 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, the new Council member will be sworn in. This will be followed by Congressional, White House, budget and planning updates. The Chairman, Dana Gioia, will make a presentation with Council response and discussion to follow. Other agenda items will include: Application Review for Arts Learning, Challenge America: Access, Heritage/ Preservation, National Heritage Fellowships, Partnership Agreements, and Leadership Initiatives; review of Guidelines for Arts on Radio and Television, Folk Infrastructure Initiative, Partnership Agreements, and Honorific Fellowships; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due

to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: March 17, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 03–6864 Filed 3–21–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: April 25, 2003: 8 a.m. to 3:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 1235, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of Information Technology Research. CISE Research Education Themes and Cyber Infrastructure.

Dated: March 14, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–6905 Filed 3–21–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 16, 2003, 8:30 a.m.–5 p.m. and April 17, 2003, 9 a.m.–2:30 p.m.

Place: Stafford I, RM 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Science Foundation, Suite 1205, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

April 16—
- Update on ''rollout'' of ACERE ''Synthesis'' report
- Update on recent NSF environmental activities
- Discussion of potential ACERE mini-reports
- Panel presentations and discussion of Synthesis: Economics and Environment

April 17—
- Meeting with the Director
- Continued discussion of topics from previous day
- AC–ERE Task Group Meetings and Reports

Dated: March 18, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–6906 Filed 3–21–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Office of Polar Programs Advisory Committee (1130).

Date/Time: May 29, 2003; 8 a.m. to 5 p.m., May 30, 2003; 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room: 555, Stafford II, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Altie Metcalf, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Discussion of NSF-wide initiatives and long-range planning.

Dated: March 18, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–6904 Filed 3–21–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its June 27, 2002, application for proposed amendment to Facility Operating License No. NPF–12 for the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would have added an Allowed Outage Time to Table 3.3–3, Engineered Safety Features Actuation System Instrumentation, Action 16.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 23, 2002 (67 FR 48221). However, by letter dated February 25, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 27, 2002, and the licensee's letter dated February 25, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 18th day of March 2003.

For the Nuclear Regulatory Commission.

Karen R. Cotton,

Project Manager, Section 1, Project Directorate ll, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–6951 Filed 3–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 04008155]

Finding of No Significant Impact Related to H.C. Starck, Inc.'s Amendment Request To Authorize Decommissioning of Its Coldwater, Michigan Facilities

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a license amendment of Source Material License No. STB–1161 to authorize decommissioning of the H.C. Starck, Inc. facilities in Coldwater, Michigan, and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate, and therefore, an Environmental Statement is unnecessary.

II. EA Summary

The EA was prepared to evaluate the environmental impacts of the proposed amendment to H.C. Starck, Inc. Source Material No. STB–1161, to authorize H.C. Starck to remediate residual thorium contamination resulting from licensed activities at their facilities at 460 Jay Street, Coldwater, Michigan. H.C. Starck, Inc. has been licensed for the possession and use of thorium-232 at their facilities in Coldwater, Michigan, since 1973. The H.C. Starck facilities consist of six primary structures: A main production plant, Jolter Building, Former Polymer Building, a wastewater pretreatment building, and two pole-barn storage buildings. The facility is in a rural area of southern Michigan about two miles southwest of downtown Coldwater. Branch County is largely agricultural with farms occupying 70 percent of the land. Non-residential land use in the vicinity of the Starck site primarily consists of agricultural, industrial, commercial, and retail facilities. The nearest residence is within 1,000 feet of the H.C. Starck facility. Soil sampling conducted by H.C. Starck indicates that no radiological contamination has migrated outside the buildings. In addition, there is no evidence that any onsite burial of radiological material ever occurred. Because no remediation is required outside of the buildings, decontamination activities are not expected to have any impact on the environment. Furthermore, no long-term environmental monitoring is expected to be necessary as a result of licensed activities. Because H.C. Starck will continue to operate the facility at the same staffing levels following termination of licensed operations, no socioeconomic impact is anticipated on the employees or within the community. It is anticipated that the total amount of dry solid low level radioactive waste (LLRW) generated from decommissioning activities will be less than 1,000 cubic feet. Waste may be stored onsite in the radioactive waste storage vault or other appropriate secure location while it is being consolidated for shipment to Envirocare of Utah. Any liquid waste generated during decommissioning will be sampled, and the results will be compared to current discharge limits prior to disposal directly into the facility effluent stream or to the facility treatment plant. No radiological dose is expected to a member of the public as a result of the decommissioning activities. For occupational dose estimates, H.C. Starck will employ properly trained and experienced personnel who will apply industry accepted ALARA (as-low-as-reasonably-achievable) principals to minimize exposures during decontamination activities. Decontamination workers are not expected to receive a dose greater than 10 millirem during the expected 6 to 8 weeks of decommissioning activities. Dose assessments were performed to estimate the potential dose to a future site occupant working at the H.C. Starck facility. This average member of the critically exposed group would be exposed to post-decontamination levels of natural thorium contamination. The modeling results determined that a maximum dose rate to a future occupant is 23 millirem/year. This dose rate decreases to about 2 millirem/year after 2.8 years based on the source lifetime for the residual removable contamination on the walls, floor and ceiling. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

H.C. Starck's request for the proposed action was previously noticed in the **Federal Register** on October 11, 2002 (67 FR 63457), along with a notice of an opportunity to request a hearing and an opportunity to provide public comment on the action and its environmental impacts.

III. Finding of No Significant Impact

Based on this EA, as summarized above, the NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment, and therefore, an environmental impact statement is unnecessary.

IV. Further Information

Any questions with respect to this action should be referred to Mr. William Snell, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9871 or by email at *wgs@nrc.gov.*

H.C. Starck's request for the proposed action (ADAMS Accession No. ML022550372) and the NRC's complete Environmental Assessment (ADAMS Accession No. ML030660370) are available for inspection and copying for a fee in the U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Rd., Lisle, Illinois. The documents, along with most others referenced in the EA, are available for public review through ADAMS at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Dated in Lisle, Illinois, this 12th day of March, 2003.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Material Safety, RIII.

[FR Doc. 03–6950 Filed 3–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on May 20–21, 2003. The meeting will take place at the address provided below. All sessions of the meeting will be open to

the public with the exception of the first session, which will be closed to conduct administrative business related to internal personnel rules and/or practices of ACMUI members. A sample of agenda topics for discussion in the public session includes: (1) Follow-up discussion of the ACMUI's recommendations to the training and experience requirements to the revised title 10, Code of Federal Regulations, part 35; (2) written directives as they pertain to certain uses of brachytherapy; (3) the ACMUI's Subcommittee activities to address the medical uses of byproduct material under title 10, Code of Federal Regulations, part 35.1000; (4) an update to the Government Accounting Office review of the domestic use of byproduct material; (5) the National Materials Program pilot project on operating experience evaluation; and, (6) physical presence requirements during stereotactic radiosurgery treatments.

DATES: The public meeting will be held on Tuesday May 20, 2003, from 1 p.m. to 5 p.m, and Wednesday, May 21, 2003, from 8 a.m. to 5 p.m. The closed session will be held from 8 a.m. to 12 p.m. on May 20.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Conference Room T2B3, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail arw@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., ACMUI Chairman, will chair the meeting. Dr. Cerqueira will manage the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela R. Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Alternately, the statement may be e-mailed to Angela R. Williamson at *arw@nrc.gov.* Submittals must be postmarked by May 13, 2003, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (www.nrc.gov) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about July 21, 2003. Minutes of the meeting will be available on or about August 20, 2003.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in title 10, U.S. Code of Federal Regulations, part 7.

Dated: March 17, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–6954 Filed 3–21–03; 8:45 am]

BILLING CODE 7690–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee For Source Term Modeling will hold a closed meeting on April 8–9, 2003, at Sandia National Laboratories (SNL), Albuquerque, NM.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Tuesday, April 8 and Wednesday, April 9, 2003—8:30 a.m. Until the Conclusion of Business

The Committee will review SNL activities and aid SNL in development of guidance documents on source terms that will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages including those for spent fuel.

Further information contact: Andrew L. Bates, (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (e.t.).

Dated: March 17, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–6955 Filed 3–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of March 24, 31, April 7, 14, 21, 28, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 24, 2003

Thursday, March 27, 2003

10 a.m. Briefing on status of Office of Nuclear Regulatory Research (RES) programs, performance, and plans.

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of March 31, 2003—Tentative

There are no meetings scheduled for the week of March 31, 2003.

Week of April 7, 2003—Tentative

Friday, April 11, 2003

9 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (public meeting) (contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

12:30 p.m. Discussion of management issues (closed—Ex. 2).

Week of April 14, 2003—Tentative

There are no meetings scheduled for the week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the week of April 28, 2003.

* The schedule for Commission meetings is subject to changes on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information: "Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)," scheduled for March 20, 2003, was canceled.

* * * * *

The NRC Commission meeting schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 20, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–7035 Filed 3–20–03; 1:12 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2803 and SF 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. This gives us a total of 150 filings. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before May 23, 2003.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–6885 Filed 3–21–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 38–107, Verification of Who is Getting Payments, is designed for use when OPM, for any reason, must verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before April 23, 2003.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540;

and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–6886 Filed 3–21–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25964; 812–12943]

Merrill Lynch Investment Managers, L.P., et al.; Temporary Order and Notice of Application

March 17, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants Merrill Lynch Investment Managers, L.P. (''MLIM''), Fund Asset Management, L.P. (''FAM''), Merrill Lynch Investment Managers International Limited (''MLIMIL''), Merrill Lynch Asset Management U.K. Limited (''MLAM UK'' and with MLIM, FAM and MLIMIL, the ''Advisers''), FAM Distributors, Inc. (''FAMD''), Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S'' and with FAMD, the ''Underwriters''), Mezzanine Investments II, L.P. (''Mezzanine''), KECALP Inc. (''KECALP''), ML Taurus, Inc. (''Taurus''), Merrill Lynch Ventures, LLC (''Ventures''), and Roszel Advisors, LLC (''Roszel'')(collectively,

''Applicants'') [1] have received a temporary order exempting them from section 9(a) of the Act with respect to an injunction entered on March 17, 2003 by the U.S. District Court for the Southern District of Texas (the ''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

FILING DATE: The application was filed on March 17, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application 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 April 11, 2003, 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: MLIM, FAM, FAMD, 800 Scudders Mill Road, Princeton, NJ 08536; MLAM UK and MLIMIL, 33 King William Street, London England EC4R 9AS; MLPF&S, Mezzanine, KECALP, Taurus and Ventures, 4 World Financial Center, New York, NY 10080; Roszel, 1300 Merrill Lynch Drive, Pennington, NJ 08534.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, at (202) 942–0610 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and 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. MLIM and FAM, registered as investment advisers under the Investment Advisers Act of 1940 (the ''Advisers Act''), are limited partnerships of which Merrill Lynch & Co., Inc. (''ML&Co.'') is the limited partner and Princeton Services, Inc. (''Princeton Services'') is the general partner. Princeton Services is an indirect wholly owned subsidiary of ML&Co. The Advisers and Roszel serve as investment advisers to numerous registered investment companies (the ''Registered Companies''), with assets under management of approximately $210 billion. MLAM UK and MLIMIL, each a wholly owned indirect subsidiary of ML&Co, are registered as investment advisers under the Advisers Act and provide investment advisory services to certain Registered Companies. Mezzanine, KECALP, Taurus and Ventures serve as investment advisers to certain business development companies (''BDCs'') and employee securities' companies (''ESCs'' and with BDCs and Registered Companies, the ''Funds''). FAMD, an indirect wholly owned subsidiary of ML&Co., is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and acts as the principal underwriter for certain of the Registered Companies. MLPF&S, a wholly owned subsidiary of ML&Co., is a global investment banking firm and a registered broker-dealer, investment adviser and futures commission merchant. It serves as the principal underwriter for certain Registered Companies (including registered unit investment trusts) and as the depositor of 765 registered unit investment trusts with approximately $4.7 billion in assets as of December 31, 2002. ML&Co. is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services on a global basis. ML&Co. and its direct and indirect subsidiaries are sometimes referred to as ''Merrill Lynch.''

2. On March 17, 2003, the U.S. District Court for the Southern District of Texas entered the Injunction in a matter brought by the Commission.[2] The Commission alleged that ML&Co. aided and abetted certain violations by Enron Corp. (''Enron'') of sections 10(b) and 13(b)(5) of the 1934 Act and rules 10b–5 and 13b2–1 thereunder and certain other provisions of the federal securities laws. The alleged violations occurred in connection with Enron's recording of revenue in its Form 10–K for the fiscal year ended 1999 in connection with a Nigerian barge transaction and two energy trades between Merrill Lynch and Enron in December 1999. Without admitting or denying the allegations in the Commission's complaint, ML&Co. consented to the entry of the Injunction as well as the payment of disgorgement and civil penalties.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines affiliated person to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Because the Applicants are all subsidiaries of the same ultimate parent company, Applicants state that they are under common control, and as such are affiliated persons of ML&Co. within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting them from the provisions of section 9(a) of the Act.

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their current or former officers or employees who are engaged in the provision of investment advisory or principal

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Merrill Lynch & Co., Inc. is or hereafter becomes an affiliated person (included in the term ''Applicants'').

[2] *Securities and Exchange Commission* v. *Merrill Lynch & Co., Inc.,* No. H–03–0946 (S.D.Tx., filed Mar. 17, 2003).

underwriting services to the Funds participated in any way in the conduct described in the Injunction. Certain Funds held securities issued by Enron at the time of the conduct described in the Injunction. The Applicants state that as far as they are aware, none of the officers, portfolio managers or any other investment personnel employed by the Advisers had any knowledge of any non-public information relating to, or had any involvement in, the conduct complained of in the Injunction. Applicants further state that the Advisers had, and continue to have, policies and procedures in place designed to prohibit or restrict communications with other Merrill Lynch employees.

5. Applicants state that the inability of the Advisers to continue providing advisory services to the Funds and the inability of the Underwriters to continue to serve as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. The Applicants also state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors (''Boards'') of the Funds that are management investment companies other than BDCs or ESCs, including the disinterested directors of such Funds and their independent legal counsel, regarding the circumstances of the Injunction, any impact on the Funds and this application. The Applicants will provide such Funds' Boards with all information concerning the Injunction and this application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Additionally, Applicants assert that if they were barred from providing services to registered investment companies, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources over more than 25 years to establish an expertise in advising and distributing registered investment companies. One of the Applicants, MLPF&S, previously has been subject to an injunction that triggered section 9(a) and received an exemption under section 9(c).[3] On another occasion, an employee of another Applicant, FAMD, also received an exemption under section 9(c).[4]

[3] *Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* Investment Company Act Release Nos. 8841 (July 2, 1975)(notice and temporary order) and 9022 (Nov. 10, 1975)(permanent order).

[4] *Charles O. Daly,* Investment Company Act Release Nos. 13003 (Feb. 1, 1983)(notice and temporary order) and 13137 (Apr. 4, 1983)(permanent order).

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6877 Filed 3–21–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Notice of Office of Management and Budget (OMB) Approval, Proposed Request and Comment Request

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Social Security Administration (SSA) is providing notice of OMB's approval of the information collections in the 20 CFR 422.527, Private Printing and Modification of Prescribed Application and Other Forms. In accordance with the Paperwork Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number. The OMB Number is 0960–0663, which expires December 31, 2005.

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

OMB:

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

SSA:

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Disability Report—20 CFR 404.1512 and 416.912, 20 CFR 404.916(c) and 416.1416(c)—Appeal—0960–0144

SSA uses form SSA–3441 to secure updated resource and condition information from claimants seeking reconsideration of denied disability benefits. The claimant also has the option of providing the information during a personal interview or through SSA's Internet application. This information assists the State Disability Determination Services (DDS) and Administrative Law Judges (ALJ) in preparing for the appeals and hearings and in issuing a decision on whether or

not an individual is entitled to or continues to be entitled to disability benefits. SSA requests completion of the SSA–3441 when individuals appeal denial of Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) benefits following a previous denial. The respondents are applicants for reconsideration of initial denial of disability benefits; reconsideration of disability cessation and individuals requesting hearings before an ALJ.

Type of Request: Revision of a currently approved OMB information collection.

SSA will collect this information using both the traditional paper format and via electronic formats through SSA information gathering systems and an online Internet collection as follows:

	Number of respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden
SSA–3441 (Paper Form)	1,079,338	1	30	539,669
Electronic Disability Collection System (EDCS)	16,790	1	30	8,395
I3441 (Internet Form)	16,690	1	60	16,690
Total Respondents—	1,112,818			
Total Burden Hours—	564,754			

2. Driver's License Signature Proof-of-Concept Study—20 CFR 404.610—0960–NEW

SSA plans to explore the feasibility of providing an electronic alternative to the traditional pen-and-ink signature by conducting a Proof-of-Concept (POC) test using an individual's driver's license or State-issued identity card number as an electronic signature. If the applicant voluntarily decides to provide the driver's license or State-issued identity card number, an SSA employee will verify the validity of the number with the issuing State motor vehicle agency by submitting the information electronically to the State that issued the license through a connection with the American Association of Motor Vehicle Administrators (AAMVA). If the State confirms that the number is valid and the name provided matches that on its records, the SSA interviewer will annotate SSA's electronic claims record that the application was signed by electronic signature. The respondents to this collection are applicants that apply for Social Security Retirement benefits within a test State and opt to participate in the POC.

Type of Request: New information collection.

Number of Respondents: 93,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 4,650 hours.

3. Request for Workers' Compensation/Public Disability Information—20 CFR, Subpart E, 404.408—0960–0098

SSA uses form SSA–1709 to request and/or verify information about workers' compensation or public disability benefits given to Social Security disability recipients so that the proper adjustment is made to their monthly benefits. The respondents are Federal, State, and local agencies administering Workers' Compensation or public disability benefits, private workers, insurance carriers and public or private self-insured companies.

Type of Request: Extension of an OMB-approved information collection:

Number of Respondents: 140,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 35,000 hours.

4. Self-Employment/Corporate Officer Questionnaire—20 CFR 404.435(e) 404.446—0960–0487

Form SSA–4184 is used to develop earnings data and corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The information collected is used to determine benefit amounts. The respondents are self-employed individuals and corporate officers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 6,667 hours.

5. Claim for Amount Due in the Case of a Deceased Beneficiary—20 CFR 405.503(b)—0960–0101

Section 204(d) of the Social Security Act provides that if a beneficiary dies before payment of Social Security benefits has been completed, the amount due will be paid to the persons meeting specified qualifications. The information collected on Form SSA–1724 is used by SSA to determine whether an individual is entitled to the underpayment. The respondents are applicants for the amounts of an underpayment of a deceased beneficiary.

Type of Request: Revision of a currently approved OMB information collection.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 50,000 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on this information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Action: Comment Request

Statement of Income and Resources—0960–0124

The information collected on form SSA–8010–BK is used in Supplemental Security Income (SSI) claims and redeterminations to obtain information about the income and resources of: Ineligible spouses, parents/spouses of parents, and children living in the claimant's/beneficiary's household; essential persons; and sponsors of aliens (including spouses of sponsors who live with the sponsor). The information is needed to make initial or continuing eligibility determinations for SSI claimants/beneficiaries who are subject to deeming. If eligible, the information is used to determine the amount of the SSI payment. The respondents are persons whose income and/or resources must be considered in determining the

eligibility of SSI claimants or beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 341,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 142,083 hours.

Dated: March 18, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–6890 Filed 3–21–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Numbers ANE–2001–35.13–R0 and ANE–2001–35.31–R0]

Policy for Propeller Level Failure Effects; Policy for Bird Strike, Lightning, and Centrifugal Load Testing for Composite Propeller Blades

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; policy statements.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for propeller-level failure effects and policy for bird strike, lightning, and centrifugal load testing for composite propeller blades.

DATES: The FAA issued policy statement numbers ANE–2001–35.13–R0 and ANE–2001–35.31–R0 on March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov;* telephone: (781) 238–7116; fax: (781) 238–7199.

The policy statements are available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy of the policies by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on April 29, 2002 (67 FR 21012) to announce the availability of the proposed policies and invite interested parties to comment.

Background

Many new propeller certification programs include composite blades and spinners and electronic controls. Part 35 of Title 14 of the Code of Federal Regulations (14 CFR part 35) does not have explicit safety standards for the substantiation of propellers with composite blades and spinners for bird strike, lightning strike, and centrifugal loads, nor does it address electronic controls and safety assessment. The safety standards for these design features and analyses have been incorporated into the propeller certification basis by issuing special conditions. Until rulemaking is finalized to incorporate these standards into part 35, individual propeller certifications that contain these novel or unusual design features must continue to be addressed with special conditions.

Policy Statement Number ANE–2001–35.13–R0 provides guidance for the development of those special conditions with regard to propeller-level failure effects. Policy Statement Number ANE–2001–35.31–R0 provides guidance for structurally substantiating propellers with composite blades and spinners for bird strike, lightning strike, and centrifugal loads. These policies do not create any new requirement.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on March 12, 2003.

Mark C. Fulmer,

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

[FR Doc. 03–6919 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wayne County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed international border crossing improvements in Wayne County, Michigan, including improvements to existing infrastructure, new border crossing(s) and new or expanded border processing facilities. The study is being undertaken in partnership with Transport Canada, the Michigan Department of Transportation, and the Ontario Ministry of Transportation referred to below as the Border Partnership.

FOR FURTHER INFORMATION CONTACT: In the United States, James A. Kirschensteiner, Assistant Division Administrator, Federal Highway Administration, 315 West Allegan Street, Room 207, Lansing, Michigan 48933, Telephone: (517) 702–1835, Fax: (517) 377–1804, email: *james.kirchensteiner@fhwa.dot.gov.* Or, Margaret Barondess, Manager, Environmental Section, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone: (517) 335–2621, Fax: (517) 373–9255, email: *barondessm@michigan.gov.*

In Canada, James Lothrop, Manager Highway Programs, Transport Canada, Tower C, Place de Ville 18th Floor, 330 Sparks Street, Ottawa, ON K1A ON5, Telephone: (613) 998–1902, Fax: (613) 990–9636, email: *lothroj@tc.gc.ca.* Or, Fred Leech, Project Coordinator Ontario Ministry of Transportation (MTO), MTO Head Office, Garden City Tower, 4th Floor 301 St. Paul Street, St. Catherines, Ontario, L2R 7R4, Telephone: (905) 704–2218, Fax: (905) 704–2007, email: *Fred.Leech@mto.gov.on.ca.*

SUPPLEMENTARY INFORMATION: The FHWA, as a member of the Bi-National Border Partnership, will prepare an Environmental Impact Statement for a proposal to develop transportation improvements to alleviate traffic congestion and address future travel demand and capacity between southeast Michigan and southwest Ontario as identified in a Planning Needs and Feasibility study. The project would identify the purpose and evaluate needs, potential improvements to existing infrastructure, including new crossings, the potential for expansion or implementation of all modes of transportation (rail, highway, marine, etc.) and the need for new or improved border processing facilities to improve the safe and secure flow of people, goods, and services across the international border. Improvements are considered necessary to provide for increased international movement efficiencies both regionally and nationally.

The existing geographical international ways and means in Southeast Michigan and Southwest Ontario include the Blue Water bridges, the Detroit-Windsor Tunnel, the Ambassador Bridge, and railroad tunnels between Windsor and Detroit and Port Huron, Michigan, and Sarnia, Ontario, as well as a ferry that operates on the Detroit River.

Alternatives under consideration include: (1) Taking no action; (2) improving existing facilities to increase their capacity to move goods, services, and people; (3) construction of a new crossing or crossings to increase capacity and provide redundancy; (4) expansion or implementation of non-highway modes of transportation (rail, marine, etc.); or (5) some combination of (2), (3), and (4). As part of the EIS, an Enhanced Scoping Information Package will be prepared. The Scoping Information Package will describe alternative locations for improving international crossing activity in southeast Michigan; inventory and map known resources; identify and map social, economic, and environmental constraints; and select practical alternatives. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. Cooperating Federal agencies will be solicited.

A series of public meetings were held in Detroit, Michigan, Windsor, Ontario, and Sarnia, Ontario, on November 12–14, 2002. Other public meetings are planned as is a formal public hearing for the draft environmental impact statement. Public notice will be given of the time and place of the meetings and hearing. Meetings to review the enhanced Scoping Information Package will be held on dates yet to be determined.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued on: March 14, 2003.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 03–6927 Filed 3–21–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 403X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Sedgwick County, KS

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad, between milepost 494.22 and milepost 505.20 in and near Wichita, KS, and from milepost 515.23 to milepost 509.30 between Wichita and Valley Center, in Sedgwick County, KS, a total distance of 16.91 miles. The line traverses United States Postal Service Zip Codes 67147, 67204, 67206, 67208, 67214, 67219, and 67230.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 23, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 3, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 14, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 28, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by March 24, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6802 Filed 3–21–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–468 (Sub–No. 5X)]

Paducah & Louisville Railway, Inc.—Abandonment Exemption-in McCracken County, KY

On March 4, 2003, Paducah & Louisville Railway, Inc. (P&L), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon approximately 5,780 feet of rail line extending from station number 17+55, near Caldwell Street, to station number 64+00, near 6th Street, on each side of railroad milepost 1, in the city of Paducah, McCracken County, KY. The line traverses United States Postal Service Zip Code 42003.

The line does not contain federally granted rights-of-way. Any documentation in P&L's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 20, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 14, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–468 (Sub-No. 5X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington DC 20423–0001; and (2) William A. Mullins, Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington DC 20004. Replies to the petition are due on or before April 14, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or an environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our web site at *http://www.stb.dot.gov*.

Decided: March 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6801 Filed 3–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Vocational Rehabilitation and Employment (VR&E) Task Force; Notice of Establishment

As required by section 9(a)(2) of Public Law 92–463 (Federal Advisory Committee Act), the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Vocational Rehabilitation and Employment (VR&E) Task Force. The Secretary of Veterans Affairs has determined that establishing the Task Force is both necessary and in the public interest.

The Task Force will conduct an independent review of the VR&E Program within the Veterans Benefits Administration (VBA). The Task Force will make recommendations to the Secretary of Veterans Affairs on improving the Department's ability to provide comprehensive services and assistance to veterans with service-connected disabilities and employment handicaps in becoming employable, and obtaining and maintaining suitable employment. The Task Force will also assess independent living services provided by VA.

The duties and responsibilities of the Task Force will focus on training, employment, and independent living services. The Task Force will engage in the following activities: (i) Conduct a functional and organizational assessment of the VR&E Service; (ii) evaluate eligibility criteria, procedures, and processes for determining how a veteran is approved for training, employment, or independent living services as governed by applicable provisions of chapter 31 of title 38, United States Code; (iii) appraise current VR&E processes, information systems, and management controls; (iv) determine consistency in the administration of the VR&E Program across VBA regional offices; and (v) examine clinical rehabilitation practices and employment placement services being utilized by other Federal, state, local or private organizations serving disabled persons, including veterans.

Dated: March 18, 2003.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–6902 Filed 3–21–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 56

Monday, March 24, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC43

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations

Correction

In rule document 03–3425 beginning on page 8402 in the issue of Thursday, February 20, 2003 make the following correction:

§ 250.456 [Corrected]

On page 8432, in the first column, in § 250.456, in paragraph (i), in the second line, ''hour'' should read ''tour''.

[FR Doc. C3–3425 Filed 3–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 24, 2003

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA 2003–14715; Notice No. 03–05]

RIN 2120–AG34

Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice of proposed rulemaking (SNPRM) amends the notice of proposed rulemaking (NPRM) published on December 31, 1996 (Noise Limitations NPRM, 61 FR 69334; Notice 96–15), which proposed to establish noise efficiency limitations for certain aircraft operations at Grand Canyon National Park (GCNP). It proposes standards for quiet technology that are reasonably achievable, as mandated by Congress. The standards for quiet technology proposed in this SNPRM will help the National Park Service (NPS) achieve its statutory mandate to provide for the substantial restoration of natural quiet and experience in the GCNP. To meet this mandate, the FAA is proposing to use a noise efficiency approach (larger aircraft with more passenger seats are allowed to generate proportionally more noise) to define quiet technology. This SNPRM does not require any action by operators, as it is intended solely to make clear what the FAA is proposing as the standard for quiet technology.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify Docket Number FAA–2003–14715 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the entire public docket for this SNPRM at that same site.

You may also review the public docket in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Connor, AEE–100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8933.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection both before and after the closing date for receiving comments. Before taking any final action on this proposal, we will consider all comments made on or before the closing date for comments.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of the SNPRM

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number or amendment number of this rulemaking.

Overview

This supplemental notice of proposed rulemaking (SNPRM) amends the notice of proposed rulemaking (NPRM) published on December 31, 1996 (Noise Limitations NPRM, 61 FR 69334; Notice 96–15), which proposed to establish noise efficiency limitations for certain aircraft operations at Grand Canyon National Park (GCNP). It proposes standards for quiet technology that are reasonably achievable, as mandated by Congress. The standards for quiet technology proposed in this SNPRM will help the National Park Service (NPS) achieve its statutory mandate to provide for the substantial restoration of natural quiet and experience in the GCNP. To meet this mandate, the FAA is proposing to use a noise efficiency approach (larger aircraft with more passenger seats are allowed to generate proportionally more noise) to define quiet technology. This SNPRM does not require any action by operators, as it is intended solely to make clear what the FAA is proposing as the standard for quiet technology. Further, this SNPRM does not relieve operators of the currently established operational limitations. As this SNPRM does not require any immediate action by operators, it has minimal costs or benefits. Any eventual costs and benefits will be assessed in any later rulemaking recommendations of how the quiet technology standards are applied. All decisions about implementing these standards, including possible establishment of quiet technology routes, incentives to encourage adoption of quiet technology, imposition of a phase out of aircraft that do not meet the quiet technology designation or other actions will be dealt with through the advisory group procedures as directed by the National Park Air Tour Management Act. This SNPRM, as it disposes of the comments that the FAA received in response to the Noise Limitations NPRM (95–15), also offers a short history of the legislative and regulatory actions with respect to air tour operations in the GCNP.

History

Table 1 provides a timeline of events related to the effort to designate quiet technology requirements for commercial air tour operations in GCNP. These events are described in this and succeeding sections.

Beginning in the summer of 1986, the FAA initiated regulatory action to

address increasing air traffic over GCNP. On March 26, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50 (subsequently amended on June 15, 1987; 52 FR 22734) establishing flight regulations in the vicinity of the GCNP. The purpose of the SFAR was to reduce the risk of midair collisions, reduce the risk of terrain contact accidents below the rim level, and reduce the impact of aircraft noise on the park environment.

TABLE 1.—TIMELINE OF EVENTS RELATED TO THE DESIGNATION OF QUIET TECHNOLOGY FOR AIR TOUR OPERATIONS IN GCNP

Year	Month	Event
1987	March/June	The FAA publishes SFAR No. 50 to establish special flight regulations in vicinity of GCNP (52 FR 22734).
	August	Congress enacts National Parks Overflights Act (Pub. L. 100–91).
	December	The DOI transmits ''Grand Canyon Aircraft Management Recommendation'' to the FAA.
1988	May/June	The FAA publishes SFAR No. 50–2 to revise flight procedures in GCNP airspace (53 FR 20264).
1994	March	The FAA and NPS issue ANPRM seeking public comment on quiet technology and incentives (59 FR 12740).
	September	The DOI submits to Congress ''Report on Effects of Aircraft Overflights on the National Park Systems''.
1995	June	The FAA extends SFAR No. 50–2 until June 15, 1997 (60 FR 31608).
	July	The DOI report to Congress is published.
1996	April	The President publishes a memorandum directing the substantial restoration of natural quiet in GCNP.
	July	The FAA publishes NPRM (Notice 96–11) to amend 14 CFR part 93 to codify SFAR No. 50–2 (61 FR 40120).
	December	The FAA publishes final rule to codify SFAR No. 50–2 into a new subpart U of 14 CFR part 93 (61 FR 69302).
	December	The FAA publishes NPRM (Notice 96–15) on noise limitations for air tour operations in GCNP (61 FR 69334).
	December	The FAA publishes notice of availability of proposed commercial air tour routes (61 FR 69356).
1997	February	The FAA delays the effective date of 14 CFR sections 93.301, 93.305, and 93.307 and reinstates portions of SFAR No. 50–2 (62 FR 8862).
	May	The FAA publishes NPRM (Notice 97–6) to establish Bright Angel incentive corridor and the National Canyon corridor for air tour routes (62 FR 26902).
	October	The FAA publishes clarification of its reevaluation of the economic and environmental impacts of the final rule published on 12/31/96 (62 FR 58898).
	December	The FAA further delays the effective date of 14 CFR sections 93.301, 93.305, and 93.307 and reinstates portions of SFAR No. 50–2 (62 FR 66248).
1998	July	The FAA withdraws the National Canyon corridor proposal (63 FR 38232).
	July	The FAA also withdraws Notice 97–6, which proposed two quiet technology incentive corridors (63 FR 38233).
	December	The FAA delays the effective date of 14 CFR sections 93.301, 93.305, and 93.307 and reinstates portions of SFAR No. 50–2 (63 FR 67544).
1999	January	The NPS publishes a notice of agency policy, ''Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park'' (64 FR 3969).
	February	The FAA delays the effective date of 14 CFR sections 93.301, 93.305, and 93.307 and reinstates portions of SFAR No. 50–2 (64 FR 5152).
	July	The FAA published an NPRM (Notice 99–11) to modify the dimensions of the GCNP SFRA (64 FR 37296).
	July	The FAA also published NPRM (Notice 99–12) to limit the number of commercial air tours conducted in GCNP (64 FR 37304).
	July	The NPS evaluation methodology becomes effective (64 FR 38006).
2000	February	The FAA delays the effective date of 14 CFR sections 93.301, 93.305, and 93.307 and reinstates portions of SFAR No. 50–2 (65 FR 5395).
	April	The FAA publishes the commercial air tour limitations final rule (65 FR 17708).
	April	The FAA publishes the airspace modification final rule (65 FR 17736).
	April	Congress enacts the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181, Title VIII).
	May	The commercial air tour limitations final rule becomes effective (14 CFR 93.315, 317, 319, 321, 323, and 325).
	November	The FAA delays the effective date of the airspace modification final rule (65 FR 69846).
2001	January	The FAA delays the effective date of the airspace modification final rule and reinstates portions of SFAR No. 50–2 (66 FR 1002).
	March	The FAA and the NPS jointly issue a notice establishing the NPOAG (66 FR 14429).
	March	The FAA delays the effective date of the airspace modification final rule (66 FR 16582).
	April	The airspace modifications final rule becomes effective (14 CFR 93.301, 93.305, 93.307, and 93.309).
	June	The FAA and the NPS announce the National Parks Overflights Advisory Group membership (66 FR 32974).
	December	The FAA delays the effective date of the airspace modification final rule (66 FR 63294).

In August 1987, Congress enacted Public Law (Pub. L.) 100–91, commonly known as the National Parks Overflights Act (or the Overflights Act). The Overflights Act stated, in part, that noise associated with aircraft overflights at GCNP was causing ''a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.''

Section 3 of the Overflights Act required the Department of the Interior (DOI) to submit to the FAA recommendations to protect resources in the GCNP from adverse impacts associated with aircraft overflights. The law mandated that the recommendations: (1) Provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight; (2) with limited exceptions, prohibit the flight of aircraft below the rim of the canyon; and (3) designate flight-free zones except for purposes of administration and emergency operations.

In December 1987, the DOI transmitted its ''Grand Canyon Aircraft Management Recommendation'' to the FAA. The Overflights Act required the FAA to prepare and issue a final plan for the management of air traffic above the GCNP, implementing the recommendations of the DOI without change unless the FAA determined that executing the recommendations would adversely affect aviation safety.

On May 27, 1988, the FAA issued SFAR No. 50–2 revising the procedures for operation of aircraft in the airspace above the GCNP (53 FR 20264). SFAR No. 50–2 established a Special Flight Rules Area (SFRA) from the surface to 14,499 feet above mean sea level (MSL) in the area of the GCNP. The SFAR prohibited flight below a certain altitude in each of five sectors of this area, with certain exceptions. The SFAR established four flight-free zones from the surface to 14,499 feet MSL covering large areas of the park. The SFAR provided for special routes for commercial sightseeing operators. These operators are required to conduct sightseeing operations under either part 121 or part 135 of Title 14 of the Code of Federal Regulations (CFR) as specified in their operations specifications. Finally, SFAR 50–2 contained certain terrain avoidance and communications requirements for flights in the area.

In March 1994, the two agencies jointly issued an advance notice of proposed rulemaking (ANPRM) seeking public comment on policy recommendations addressing the effects of aircraft overflights on national parks, including GCNP (59 FR 12740). The recommendations presented for comment included: (1) Voluntary measures; (2) altitude restrictions; (3) flight-free periods; (4) flight-free zones; (5) allocation of noise equivalencies; and (6) incentives to encourage use of quiet aircraft technology. In response to the ANPRM, the FAA received 644 comments that specifically addressed GCNP.

A second major provision of section 3 of the Overflights Act required the DOI to submit a report to Congress discussing whether SFAR No. 50 ''has succeeded in substantially restoring the natural quiet in the park; and such other matters, including possible revisions in the plan, as may be of interest.'' The report was to include comments by the FAA ''regarding the effect of the plan's implementation on aircraft safety.'' The Overflights Act mandated a number of studies related to the effect of overflights on parks.

On September 12, 1994, the DOI submitted its final report and recommendations to Congress. This report entitled ''Report on Effects of Aircraft Overflights on the National Park System,'' was published in July 1995. The report recommended numerous revisions to SFAR No. 50–2 in order to substantially restore natural quiet in GCNP. Recommendation No. 10, ''Improve SFAR 50–2 to Effect and Maintain the Substantial Restoration of Natural Quiet at Grand Canyon National Park,'' is of particular interest to this rulemaking. This recommendation incorporated the following general concepts: (1) Simplification of the commercial sightseeing route structure; (2) expansion of flight-free zones; (3) accommodation of the forecast growth in the air tour industry; (4) phased-in use of quieter aircraft technology; (5) temporal restrictions (''flight-free'' time periods); (6) use of the full range of methods and tools for problem solving; and (7) institution of changes in approaches to park management, including the establishment of an acoustic monitoring program by the NPS in coordination with the FAA. On June 15, 1995, the FAA published a final rule that extended the provisions of SFAR No. 50–2 to June 15, 1997 (60 FR 31608).[1] This action allowed the FAA sufficient time to review the NPS recommendations and to initiate and complete appropriate rulemaking action.

President's Memorandum

The President, on April 22, 1996, issued a Memorandum for the Heads of Executive Departments and Agencies to address the significant impacts on visitor experience in national parks. Specifically, the President directed the Secretary of Transportation to issue proposed regulations for GCNP that would appropriately limit sightseeing aircraft to reduce the noise immediately and to further restore natural quiet, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with the Overflights Act.

Regulations

On July 31, 1996, the FAA published an NPRM (61 FR 40120; Notice 96–11) to reduce the impact of aircraft noise on GCNP and to assist the NPS in achieving its statutory mandate imposed by the Overflights Act to provide for the substantial restoration of natural quiet and experience in GCNP. A final rule was issued on December 31, 1996 (61 FR 69302) to amend 14 CFR part 93 with a new subpart U (sections 93.301 to 93.317). The amendment adopted the following: (1) Modification of the dimensions of the GCNP SFRA; (2) establishment of new flight-free zones and flight corridors, as well as modification of existing flight-free zones and flight corridors; (3) establishment of flight-free periods (curfews) in the Dragon and Zuni Point Corridors; and (4) establishment of reporting requirements for commercial sightseeing companies operating in the SFRA. This final rule also placed a temporary limit on the number of aircraft that could be used for commercial sightseeing operations in the GCNP SFRA. These provisions were to become effective on May 1, 1997. Only the reporting requirements, and aircraft cap were actually implemented. Implementation of the remaining provisions had been delayed.

Additionally, on December 31, 1996, the FAA published an NPRM on Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park (61 FR 69334; Notice 96–15), and a Notice of Availability of Proposed Commercial Air Tour Routes in the **Federal Register** (61 FR 69356). These two documents were part of an overall strategy to reduce further the impact of aircraft noise on the park environment

[1] The provisions of SFAR No. 50–2 have been extended numerous times (60 FR 31608, 62 FR 8862; 62 FR 66248; 63 FR 67544; 64 FR 5152; 65 FR 5395) with the last extension in January 2001 (66 FR 1002).

and to assist the NPS in achieving its statutory mandate imposed by the Overflights Act.

1996 Proposal for Quiet Technology Designation

In the 1996 NPRM (Noise Limitations NPRM), Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park, FAA proposed to establish noise limitations for certain aircraft operating in the vicinity of GCNP. The proposed aircraft noise limitations rule generally would have required air tour aircraft to be categorized according to each aircraft's noise efficiency. This NPRM sought to reduce the impact of air tour aircraft noise on GCNP and to assist NPS in achieving substantial restoration of natural quiet in GCNP. The 1996 proposal had three parts: (1) Provide an incentive flight corridor through the National Canyon for noise efficient aircraft; (2) categorize aircraft by noise efficiency; and (3) remove the aircraft cap for the most noise efficient aircraft.

First, the proposed rule would have implemented incentives to encourage operators to convert to the most noise efficient category of air tour aircraft. The NPRM also provided an incentive route for the use of noise efficient aircraft within the GCNP.

Second, the NPRM proposed to divide air tour aircraft into three categories according to their level of noise efficiency, as measured by the relationship between the certificated noise level of the aircraft and the number of passenger seats on the typical configuration of that aircraft type. The noise efficiency concept was preferred because it encouraged the replacement of a tour aircraft with a larger, more noise efficient aircraft, which would both reduce the noise of each operation and reduce the number of air tour operations while still accommodating the same number of passengers. Additionally, the NPRM defined the three categories of noise efficiency as, Category A, the least noise efficient; Category B, more noise efficient than Category A; and, Category C, the most noise efficient. The NPRM proposed phasing-out the use of the least noise efficient aircraft.

Third, the NPRM proposed removing the temporary cap placed on the number of aircraft permitted to be used for commercial sightseeing operations in the GCNP for operators using Category C air tour aircraft, the most noise efficient air tour aircraft in GCNP.

The FAA's findings and recommendations were presented in full detail in the publication of the NPRM. Following the publication of the NPRM, as well as a number of other related rulemakings at the end of December 1996, the FAA and NPS jointly agreed that the best approach to substantially restore natural quiet in GCNP was to devote their resources to the development of those final rules that addressed critical near-term needs. Thus, priority was given to the promulgation of final rules on changes to the airspace over GCNP and establishment of operations limitations for air tour flights. The agencies again focused on the quiet technology rulemaking as soon as the airspace and operations limitation final rules were published in April 2000.

Related Federal Rulemaking and Policies Since 1996

On February 26, 1997, the FAA published a final rule (62 FR 8862) that amended the effective date of modifications to the GCNP SFRA that were codified in an earlier final rule published on December 31, 1996. This action delayed the effective date for 14 CFR sections 93.301, 93.305, and 93.307 of the final rule and reinstated portions of SFAR 50–2 and amended the expiration date of that SFAR.[2]

On May 15, 1997, the FAA published an NPRM (62 FR 26902; Notice 97–6), which proposed to amend two of the flight-free zones within the GCNP by establishing two corridors through the flight-free zones. The first corridor through the Bright Angel Flight-Free Zone would have been an incentive corridor to be used only by the most noise efficient air tour aircraft. The second corridor in the Toroweap/Shinumo Flight-Free Zone through the National Canyon area would have created a marketable air tour route in the central section of the Park while addressing some concerns of the Native Americans.

After implementation of certain provisions of the final rule, the FAA discovered that it had underestimated the number of commercial air tour aircraft operating in GCNP in 1995. The FAA reevaluated the economic and environmental analyses completed for the final rule in light of this new information and determined that the changes were not of such magnitude as to affect the Agency's position on the implementation of the final rule. On October 31, 1997, the FAA published a notice of clarification (62 FR 58898) to set forth its reevaluation of the economic and environmental impacts associated with the Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP) Final Rule, published on December 31, 1996.

On July 15, 1998, the FAA published an SNPRM (63 FR 38232) to the Noise Limitations NPRM published on December 31, 1996, removing from consideration two sections that proposed to establish a corridor in the Toroweap/Shinumo Flight-Free Zone through the National Canyon area as an incentive route for quiet technology aircraft. The FAA, in consultation with the NPS, removed these two sections from the NPRM because comments submitted by the air tour operators, the environmentalists, and the Native Americans led the two agencies to conclude that the National Canyon air tour route was not a viable option. At the same time, the FAA withdrew NPRM Notice 97–6, which had proposed quiet technology incentive corridors in the Park (63 FR 38233)—Bright Angel and the National Canyon corridors.

On January 26, 1999, the NPS published for comment a public notice of agency policy, ''Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park'' (64 FR 3969). This noise assessment methodology became effective on July 14, 1999 (64 FR 38006). The new policy adopted refinements to NPS' noise evaluation (*i.e.*, impact assessment) methodology for air tour operations over GCNP. Specifically, the refinements adopted a two-zone system for assessing impacts related to substantial restoration of natural quiet at GCNP. In Zone One, encompassing about one-third of the Park's area, the threshold of noticeability previously used in noise modeling for environmental analyses related to GCNP air tours remains unchanged (*i.e.*, the level at which people, otherwise preoccupied, would notice the noise, determined to be the average A-weighted natural ambient level plus 3 decibels(dB)). In Zone Two, encompassing about two-thirds of the Park's area, the threshold for the onset of impact is audibility (*i.e.*, the level at which aircraft can begin to be heard by people with normal hearing, determined to be 8dB below the average A-weighted natural ambient level at GCNP). Because the noise model used to assess air tour overflight noise in the park is based upon A-weighted data, the adjustments of +3 and −8 dB are the respective conversion factors related to the thresholds of noticeability and audibility in terms of the noise frequency on the one-third-octave band.

On July 9, 1999, the FAA published two NPRMs. One proposed to modify

[2] The effective date for 14 CFR 93.301, 93.305, and 93.307 was delayed by subsequent amendments (62 FR 66248; 63 FR 67544; 64 FR 5152; 65 FR 5395; 65 FR 69846; 66 FR 1002, 66 FR 16582) until finally becoming effective on April 19, 2001.

the dimensions of the GCNP SFRA (64 FR 37296; Notice 99–11); the other (64 FR 37304; Notice 99–12) to limit the number of commercial air tours that could be conducted in the GCNP SFRA and to revise the reporting requirements for commercial air tours in the SFRA. A final rule on the latter proposal was published on April 4, 2000 (65 FR 17708). The rule temporarily limits commercial air tours in the SFRA at the level reported to the FAA by the operators for the year May 1, 1997–April 30, 1998 (the base year), pending implementation of the comprehensive noise management plan. During the implementation of the commercial air tour limitation, the FAA and the NPS will collect further information regarding commercial SFRA operations and aircraft noise in GCNP. The NPS and the FAA will use the information collected during this time to determine whether the ''substantial restoration of natural quiet'' had been achieved at GCNP. In the event that the agencies determine that the statutory goal is not met through the various noise mitigation techniques adopted, the FAA and NPS will need to take further steps to achieve the substantial restoration of natural quiet. The commercial air tour limitation replaced the aircraft cap set forth in § 93.316(b).

On April 4, 2000, the FAA also published a final rule (65 FR 17736) again modifying the airspace in the SFRA. This rule went into effect on April 19, 2001.[3]

The National Parks Air Tour Management Act of 2000

The National Parks Air Tour Management Act of 2000 (the Air Tour Act) was enacted on April 5, 2000, as Title VIII of Public Law 106–181 (Pub. L. 106–181). The Air Tour Act applies to ''commercial air tour operations'' occurring over a unit of the national park, or within ½ mile outside the boundary of any national park, or tribal lands within or abutting a national park. Section 804 of the Air Tour Act states that ''within 12 months after the date of its enactment [April 5, 2000], the Administrator shall designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology for purposes of this section.'' If the Administrator determines that it is not possible to make such designation before April 5, 2001, the Administrator shall transmit to Congress a report on the reasons for not meeting such time period and the expected date of such designation. Additionally, Congress mandated that once such a designation had been made, those commercial air tour operators who employ quiet aircraft technology shall not be subject to the commercial air tour operations flight allocations at GCNP, ''* * * provided that the cumulative impact of such operations does not increase noise at Grand Canyon.'' Finally, the Air Tour Act also directs that the Administrator, in consultation with the Director and the advisory group, shall establish, by rule, routes or corridors for commercial air tour operations by fixed-wing or helicopter aircraft that employ quiet aircraft technology at Grand Canyon National Park, ''* * * provided that such routes or corridors can be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands, or safety.''

National Parks Overflights Advisory Group (NPOAG)

On March 12, 2001, the NPS and FAA in accordance with the Air Tour Act, invited persons interested in participating on the NPOAG to send a letter to the FAA by April 2, 2001 (66 FR 14429). The NPOAG membership was announced on June 19, 2001 (66 FR 32974).

In accordance with the Air Tour Act, the advisory group will provide advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Air Tour Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.

The Air Tour Act also requires FAA to consult with the advisory group and the NPS on the establishment of routes or corridors for commercial air tour operations by fixed-wing and helicopter aircraft that employ quiet aircraft technology for—

(1) Tours of the Grand Canyon originating in Clark County, Nevada; and

(2) 'Local loop' tours originating at the Grand Canyon National Park Airport, in Tusayan, Arizona.

GCNP Aircraft Noise Model Validation Study

The noise modeling used in all of the GCNP environmental documents to date, remains the best science currently available and produces results consistent with available data. However, as noise modeling is a constantly evolving technology, both agencies are committed to making appropriate adjustments to the approaches and methodologies as new knowledge or science becomes available. In 1999, the NPS and the FAA jointly funded a noise model validation study to determine the degree of accuracy and precision of existing computer models. This study compares the existing candidate models for assessing air tour noise exposure with noise measurements taken in GCNP.[4] The ongoing noise model validation effort is part of the FAA and NPS commitment to work cooperatively to meet the mandated goal of a substantial restoration of natural quiet in GCNP. The final results of this project, when they become available, could have an effect on both the determination of substantial restoration of natural quiet already achieved and the evaluation of alternative means of implementing quiet technology.

As part of the Noise Model Validation Study efforts, the agencies jointly formed the Technical Review Committee (TRC) to review and comment on various technical issues that may arise related to the measurement, quantification and analysis of soundscapes. The TRC is composed of eight acoustics and statistical experts from academia, private companies, and government agencies.

Environmental Review

In accordance with FAA Order 1050.1D, Appendix 4, Paragraph 4.j, the FAA has determined that this proposed rulemaking is categorically excluded from environmental review. The proposed rulemaking establishes quiet

[3] The effective date for the airspace modification rule was delayed by subsequent amendments (65 FR 69846; 66 FR 1002; 66 FR 16582) until becoming effective on April 19, 2001.

[4] The candidate models being validated are:

1. The FAA's Integrated Noise Model, which has been modified to address air tour aircraft noise exposure in GCNP and is referred to as the GCNP Integrated Noise Model (GCINM).

2. The National Park Service Overflight Decision Support System (NODSS) designed and programmed specifically for park applications to consider audibility, significant changes in terrain elevation, and shielding due to terrain.

3. NOISEMAP Simulation Model (NMSIM) developed by the U.S. Air Force and the National Aeronautics and Space Administration (NASA) to simulate aircraft single event noise levels.

technology designations for air tour aircraft operating in GCNP. It does not impose a phase-out or any alteration of any air tour operator's fleet of aircraft. In addition, the proposed rulemaking does not lift the operations limitation, alter any flight corridors through the Park, or make any change to the SFRA. Finally, the FAA notes that this proposed rulemaking has no impact on substantial restoration of natural quiet at GCNP and environmental and economic impacts will depend upon other future incentives yet to be defined. Accordingly, this proposed rulemaking will not individually or cumulatively have a significant effect on the human environment.

Consultation With Affected Indian Tribes

Six Native American communities represented by eight separate tribal governments have ancestral ties to the Grand Canyon. Three of these communities have reservations that border the GCNP, the Navajo Nation to the east, and the Havasupai and Hualapai Tribes to the south. The Department of Transportation (DOT), FAA, DOI, NPS, Advisory Council on Historic Preservation (ACHP), Bureau of Indian Affairs (BIA), and Arizona State Historic Preservation Officer (SHPO) have consulted with these tribes, on a Government-to-Government basis, according to the provisions of the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the Council on Environmental Quality regulations and other applicable laws and Executive Orders.

In accordance with section 106 of the NHPA, the FAA issued a Determination of No Adverse Effect to the Traditional Cultural Properties (TCPs) for all of the tribes and/or nations, except the Hualapai Tribe, for the April 2000, rulemaking actions associated with the SFRA in the vicinity of the GCNP. As to the Hualapai Tribe, the FAA along with the NPS, the Advisory Council on Historic Preservation, the Hualapai Tribal Historic Preservation Officer (THPO) and the Hualapai Department of Cultural Resources signed a Programmatic Agreement on January 24, 2000, related to section 106 compliance and their TCPs.

Due to new safety concerns raised by the Air Tour Operators related to the route and airspace modifications on the East End of the SFRA, only those modifications from west of the Dragon Corridor were implemented on April 19, 2001. In accordance with section 106 of the NHPA, if modifications are proposed for the East End commercial air tour routes and airspace to address the new safety concerns, the Navajo Nation and the other interested Native American tribes, specifically the Hopi Tribe and Pueblo of Zuni will be notified.

Public Input

The FAA has reexamined the Noise Limitations NPRM in light of the direction provided in section 804 of the Air Tour Act. The mandate requires the Administrator to designate reasonably achievable requirements for airplanes and helicopters necessary for such aircraft to be considered as employing quiet aircraft technology for purposes of this section of the Act. The proposed quiet technology designations require air tour aircraft to be categorized according to each aircraft's noise efficiency. The eventual goal is to assist the NPS in achieving its statutory mandate imposed by Pub. L. 100–91 to provide for the substantial restoration of natural quiet and experience in the GCNP. This proposed rulemaking is related to and consistent with other rulemaking actions being implemented by the FAA concerning the GCNP.

In addition, the SNPRM does not propose to implement the provision of the National Parks Air Tour Management Act of 2000 that would permit lifting the cap on commercial air tour operations in the Park. The implementation of any quiet technology incentive flight corridors and the removal of operations limitation for quiet technology aircraft will be the subject of future rulemaking as the FAA, in consultation with the NPS, works with an advisory group composed of representatives of general aviation, commercial air tour operations, environmental concerns, and Indian Tribes.

The SNPRM also disposes of the comments that were received in response to the Noise Limitations NPRM (61 FR 69334). That NPRM proposed to establish noise limitations for certain aircraft operated in the vicinity of GCNP. The Noise Limitations NPRM had three parts: (1) Establish incentive flight corridor through the National Canyon; (2) categorize aircraft by noise efficiency; and (3) remove the aircraft cap for the most noise efficient aircraft.

Interested persons were invited to participate in the rulemaking action by submitting written data, views, or comments. The comment period for the NPRM closed March 31, 1997. The comment period for the draft Environmental Assessment also closed on March 31, 1997. In response to the NPRM the FAA received 107 comments. All comments received were considered before issuing this SNPRM. An analysis of the comments not previously addressed in other rulemakings is provided below. The FAA responses take into account related Federal actions since 1996.

Commenters include air tour operators and their representatives, environmental groups, sightseeing organizations, Native American tribes, pilots and pilot associations, and individuals. Most commenters do not support some or all aspects of the proposal. Generally, air tour operators who do not currently operate quiet aircraft are against a phase-out of noisier aircraft as proposed in 1996; one Native American tribe was against the proposal in the Noise Limitations NPRM to reintroduce a flight route through the National Canyon; while environmental organizations argue that by itself the Noise Limitations NPRM would not adequately restore the natural quiet to GCNP.

1. General Comments on Proposal

The FAA received a number of general comments on the NPRM, including comments related to statutory issues, procedural complaints, and environmental concerns. Eagle Canyon Airlines (Eagle) (54), Vision Air (Vision) (61), and King Airlines, Inc. (King) (56) state that the Noise Limitations NPRM failed to identify the basis for the FAA's statutory authority for the proposed rulemaking.

These commenters state that the Overflights Act gave the FAA the legal authority to issue SFAR 50, but not to take further action beyond that. These commenters also state that the FAA's reliance on its general authority, as stated in the FAA Act, for the Noise Limitations NPRM is misplaced. The FAA Act of 1958 does not give the FAA authority to protect ''environmental values'' or to promulgate a noise management plan, according to these commenters.

The Helicopter Association International (HAI) (63) states that the proposals are arbitrary and capricious because unbiased data demonstrate that natural quiet has been restored at GCNP and air tour aircraft currently operating at GCNP are fully certificated by the FAA and in compliance with all applicable FAA safety and operating regulations.

The General Aviation Manufacturers Association (GAMA) (64) states that the NPRM does not contain the necessary scientific data or substantiation to prove that the proposal will accomplish its goal. GAMA believes that basing a rulemaking on a broad and indefinite range of terms and objectives, such as

''interference'' or ''annoyance'' of visitors and ''substantial restoration of natural quiet,'' is subjective and arbitrary. GAMA fears that introducing noise limitations and forced attrition for aircraft presently operating in the vicinity of GCNP could be the beginning of a process that could progressively tear down the entire U.S. aviation system. GAMA believes that, if FAA's strategy were applied to the vast holding of federal lands, federal parks, state lands and state parks, it would severely impact the use of general aviation aircraft and some commercial airliners as well.

Twin Otter (45) believes that quiet technology is the solution to the problem of achieving substantial restoration of natural quiet to the GCNP. However, the alternative, caps, curfews, and more limitations on how air tours can be conducted, is totally unacceptable.

Lake Mead Air (26, 53) suggests that protecting the park experience from noise will be more effectively accomplished by routing traffic away from the park visitors than by use of quiet technology and altitude.

Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority (Clark County) (62) believe that the piecemeal nature of the FAA's Grand Canyon rulemaking makes it impossible for the public to meaningfully comment on the proposals. Clark County suggests that the FAA propose its entire Grand Canyon strategy—flight-free zones, tour routes, quiet aircraft requirements, and other measures—as one package, so that the public can determine the overall program.

The United States Air Tour Association (USATA) (60) states that all of the various regulatory actions being implemented by the FAA should be combined into a single rulemaking effort to ensure that all the relevant issues are addressed as an integrated whole.

Bell Helicopter Textron (91) and the Professional Helicopter Pilots Association (85) believe that there are substantial issues in controversy in this proposal, which should necessitate the use of negotiated rulemaking by means of the Aviation Rulemaking Advisory Committee (ARAC) process.

The Sierra Club, Angeles and Grand Canyon Chapters (38, 75, 76), opposes the permissive growth of the air tour industry in the GCNP. The level of flight operations should be reduced to the 1975 levels.

The Sierra Club, Grand Canyon Chapter, believes that the Noise Limitations NPRM can be part of an acceptable plan, but would not by itself substantially restore natural quiet at GCNP. The proposal would not bring GCNP into compliance with the Overflights Act, nor would it bring the park into compliance with the management objectives of the GCNP General Management Plan. Furthermore, the proposal would not implement the actions directed by President Clinton in his Earth Day memorandum (April 1996). The Overflights Act directs the FAA to implement the recommendations of the NPS, revised only for safety. The FAA has ignored the law in this regard and continues to promote the air tour industry.

FAA Response

The Overflights Act charged the FAA, in concert with the DOI, to enact rulemaking and take what action is necessary to substantially restore the natural quiet and experience of our national parks, and to protect the public health and safety from adverse effects associated with overflights. This mandate granted the FAA with the necessary authority to promulgate any rule recommended by the NPS to effect the substantial restoration of the natural quiet and experience provided the FAA did not have any safety concerns. The practical effect of this second requirement is to ensure safe overflight of the GCNP by air tour aircraft.

With the enactment of the Air Tour Act, the FAA has the authority to ''preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands.'' *See* section 802 of the Act. Thus, it is clear that the FAA has the authority to promulgate these rules. Additionally, in accordance with the Air Tour Act, the FAA has established the NPOAG to provide advice and counsel on the implementation of quiet aircraft technology at GCNP.

The FAA notes that in order to accomplish the goal of substantial restoration of natural quiet, it is necessary to proceed with different types of regulations: (1) Those rules restricting airspace and limiting where air tour flights may go; (2) those rules limiting the number of air tours; and (3) those rules limiting the noise generated by air tour aircraft. It is for this reason that the FAA has adopted rules to enhance flight-free zones, modify the route structure, and limit the number of air tours in GCNP.

2. Natural Quiet

A number of commenters address the question of whether the proposals would contribute to the substantial restoration of natural quiet in the GCNP. Grand Canyon Trust (Trust) (72) makes the following general observations:

(1) Whatever regulatory scheme is ultimately implemented, that scheme must comply with the Overflights Act, and NPS, not the FAA, must determine whether and when natural quiet is substantially restored.

(2) The FAA must implement rules that immediately restore natural quiet to the canyon.

(3) The proposed rule must be substantially revised and strengthened because it will permit an immediate degradation of natural quiet.

(4) Any revisions to the proposed rule will have to include an immediate conversion to the quietest aircraft and a cap on the number of tour operators at well below the 1987 level.

The Sierra Club, Grand Canyon Chapter (76), states that the detectability level for defining natural quiet should be less than 5, rather than 17, which is used by NPS. The higher criterion shows an unrealistic prevalence of natural quiet. Furthermore, the definition of ''substantial restoration of natural quiet'' is flawed. A more appropriate definition would require natural quiet all of the time in most of the park, and would require natural quiet most of the day in the rest of the park. Congress mandated action to restore natural quiet and to reduce negative impact from aircraft. The FAA and NPS policy of ignoring the effects of all aircraft except tour aircraft is inappropriate.

HAI (63) states that banning some aircraft is not necessary to achieve ''restoration of natural quiet'' in GCNP, even when natural quiet is measured in the terms used by the NPS. HAI points out that the FAA's Draft Environmental Assessment (DEA), which accompanied the Noise Limitations NPRM, states that natural quiet at GCNP is within one percent of the NPS's goals without the imposition of any aircraft ban. HAI also believes that, in estimating aircraft operational and performance data, the FAA used inaccurate data and incorrect assumptions, thereby substantially overestimating the sound generated by the aircraft used in tour operations at GCNP. HAI further states that the FAA substantially underestimated the degree to which natural quiet has been restored under SFAR 50–2, and that, if the impact of aircraft overflight sound is measured in terms of visitor experience at GCNP, the data demonstrate that natural quiet has been restored to the Park. HAI believes that the FAA's aircraft sound prediction model substantially underestimates ground attenuation effects and that FAA

estimates of ambient sound at GCNP are unrealistically low.

Bell Helicopter Textron (91) states that the ambient noise projections assigned to different areas of the Park are unrealistically low. This has the resultant effect of greatly overstating how long the aircraft's sound is detectable. Equally as damaging as this unrealistic projection is the assumption that there is no lateral attenuation of aircraft sound in the Grand Canyon. Such false assumptions understate the substantial restoration of natural quiet that currently exists in the GCNP.

Clark County (62) comments that the FAA has provided no adequate basis to demonstrate the reasonableness of the defined ''natural quiet'' goal. Further, the FAA's ''time audible'' metric does not reasonably measure natural quiet. Clark County also states that the models used to estimate aircraft audibility have not been adequately explained and may overstate the extent to which aircraft can be heard.

FAA Response

Since the issuance of the Noise Limitations NPRM, the NPS published a public notice of agency policy (64 FR 3969) titled Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park. Comments to this notice were solicited and addressed by NPS. The policy refined the NPS' noise evaluation (*i.e.*, impact assessment) methodology for air tour operations over GCNP. Specifically, the refinements included a two-zone system for assessing impacts related to substantial restoration of natural quiet at GCNP.

The ongoing noise model validation effort is also part of the FAA and NPS commitment to work cooperatively to meet the mandated goal of substantial restoration of natural quiet in GCNP. The noise modeling used in all of the GCNP environmental documents to date, is the best science currently available. However, as noise modeling is a constantly evolving technology, both agencies are committed to making appropriate adjustments to the approaches and methodologies as new knowledge or science becomes available.

With regard to the ambient noise database and the lateral attenuation calculation, the GCNP aircraft noise model validation project will address these facets. All existing evidence, including field measurements, support both the choice of an ambient noise level data file for the Park and the decision to suppress INM's lateral attenuation algorithm for GCNP noise modeling. In accordance with the Air Tour Act, the implementation of quiet technology is part of the Advisory Group consultative process. The FAA and NPS recognize that conversion to quiet technology aircraft in the GCNP will not likely result in achieving complete substantial restoration of natural quiet at GCNP.

3. Native American Tribal Concerns

The Hualapai Tribe (52) states that it supports the use of quiet technology and generally supports the NPRM with the following exceptions: (1) The FAA has failed to consult with the Hualapai Tribe on a government-to-government basis as required by federal law; (2) the multiple rulemakings published by the FAA on the GCNP make the comment process more cumbersome, more expensive, and obscures the cumulative impact of the respective parts of the rulemakings; (3) there has been a double standard with respect to testing noise impact since no on-the-ground noise testing and modeling has been undertaken with respect to the Hualapai Reservation, in collaboration with the Tribe; (4) the FAA needs to look at alternatives to quiet technology such as location of air tour routes and caps; (5) there need to be ''Tribal Flight Free Zones'' to protect cultural resources and practices, natural resources, and tourism industry, as well as limitations on the number of NPS flights over the Hualapai Reservation; (6) the FAA should delegate to, or share with, the Hualapai Tribe oversight authority to make sure that the quiet technology rules are being complied with over the Reservation; and (7) there should be an exemption from quiet technology requirements for tribal administrative flights, analogous to the NPS exemption, to avoid burdening the Tribe's sovereign authority to run its own government and administer its lands.

FAA Response

The FAA has been consulting with the Hualapai in accordance with the provisions of the President's April 24, 1994, memorandum on Government-to-Government Consultation with Native American Tribes, and section 106 of the NHPA. The FAA has had numerous meetings with representatives of the Tribe's natural resources and cultural resource agencies since 1996. Additionally, the Hualapai have been part of the FAA and the NPS ongoing discussions with the other individual tribes. The Hualapai have also commented on several issues that have been addressed in previous rulemakings and were a cooperating agency on the February 2000 Final Supplemental Environmental Assessment (FSEA). The FAA responded to Hualapai comments similar to those noted above in the 2000 FSEA. *See* Appendix G of the FSEA.

The FAA has moved forward to implement recommendations from the NPS after completing a safety review of the NPS recommendations. This is consistent with the provisions of the Overflights Act. In each rulemaking the FAA attempts to outline the rulemaking history and economic impact. Some of these recommendations that have been finalized in the last two years are consistent with the Hualapai's comments on revising air tour routes and adopting limitations on the number of air tours in GCNP. *See* 65 FR 17708 and 65 FR 17736.

In accordance with section 106 of the NHPA, the FAA issued a Determination of No Adverse Effect to the Traditional Cultural Properties (TCPs) for all of the tribes and/or nations, except the Hualapai Tribe, for the rulemaking actions associated with the SFRA in the vicinity of the GCNP. As to the Hualapai Tribe, the FAA along with the NPS, the Advisory Council on Historic Preservation, the Hualapai THPO, and the Hualapai Department of Cultural Resources signed a Programmatic Agreement on January 24, 2000 related to section 106 compliance and their TCPs. The FAA notes that the United States generally supports leaving the skies open to aviation, with exceptions primarily for safety and security reasons. Flight-free zones were created in GCNP to help NPS achieve substantial restoration of natural quiet, pursuant to the mandates of the Overflights Act.

The FAA notes that the sole purpose of this rule is to define quiet technology. This rule contains no specific requirements for operators to convert to quiet aircraft. Thus, the question of which entities are responsible for oversight of this rule is not relevant.

In response to the request for an exemption to conduct administrative flights, the FAA reiterates that this and other rulemakings affect only flights satisfying the definition of a commercial air tour operation contained in 14 CFR 93.303. Moreover, this rule does not phase out aircraft that are not designated as quiet technology.

4. Classification of Aircraft by Noise Characteristics

A number of commenters address the issues related to classification based on aircraft certification, as well as the three categories of aircraft classification contained in the Noise Limitations NPRM.

Lake Mead Air (26, 53) believes that the standard for quiet aircraft should not be linked to the Aircraft Noise

Certification provisions prescribed in 14 CFR part 36, and listed in AC 36–1F, since it is possible for aircraft to be reconfigured and flown differently than AC 36–1F. The FAA should make sound measuring equipment available at Las Vegas and Grand Canyon for determining actual flyover sound levels in the tour ''cruise configuration.'' If Category A aircraft can be retrofitted to Category B it should be encouraged since such a conversion would be more easily implemented than direct conversion to Category C.

Clark County (62) states that the NPRM will unreasonably and arbitrarily burden air tour operators and the Las Vegas tourist economy. However, if the FAA based its categorization of aircraft on noise performance, rather than on certification, and provided options for compliance flexibility, there would be significantly less burden on tour operators, airborne visitors, and the economy of the Las Vegas area. Clark County states that it conducted a study of actual ambient and aircraft noise in GCNP in an attempt to validate FAA's methodology and found that using certification data, as a basis does not accurately represent aircraft noise levels in the GCNP, because it does not account for actual atmospheric and operational conditions in the GCNP. As a result, the FAA has placed aircraft in the noisier A or B categories that should belong in the B or C categories. Clark County states that the NPRM provides no means for operators to comply with the performance standards through the use of retrofitted equipment, quiet operating procedures, or other enforceable steps to reduce noise. This is at odds with the federal government's increasing attempt to use performance standards and provide compliance flexibility to reduce regulatory burden.

An airline transport pilot (40) states that the noise propagation of a propeller driven airplane is largely dependent on the design and speed of its propeller. Design and speed are responsible for a greater share of the decibel level discernible in the hearing range than exhaust output, wing shape, loading of the airplane, cowl and airframe vibration, or accessory operation (*e.g.*, flap extension, gear drag and parasitic friction). Since the design and speed factors affect all aircraft operating in the Grand Canyon a simple change, for example, operating a Cessna 207 at 2300 RPM instead of 2400 or 2500 RPM, can affect whether an aircraft should be placed in one category or another, if the categories are defined by noise values.

Lake Mead Air (26, 53) states that the decibel range for quiet Category C helicopters starts at 80 dB whereas the fixed-wing threshold is 69 dB. If 80 dB meets Category C standards for helicopters it should also meet Category C standards for fixed-wing.

Eagle (54) states that its F27 aircraft would not be covered under the NPRM. Size (48 passenger), noise tests, and decibel adjustments do not take the F27 into consideration.

Professional Helicopter Pilots Association (85) states that the existence of aircraft capable of achieving the lower sound levels is still in the developmental stage such that only one manufacturer has any such helicopters available which have the performance capability for air tour operations. As a result the NPRM is premature and should not be implemented until technology improves.

The Grand Canyon River Guides (GCRG) (50) state that helicopters, which are generally accepted to be the most obnoxious of aircraft and carry fewer people, should not fall into Category B, but should be put into Category A.

Twin Otter (45) states that it is appropriate to take into account both the flyover sound level and aircraft passenger seating capacity in establishing which models qualify as Category C aircraft because a single Vistaliner replaces two flights with the nine passenger Cessna 402/Piper Chieftain, nearly three flights in the seven passenger Cessna 207 and four flights in the 4–5 passenger Bell Jetranger.

Twin Otter adds that the Beechcraft C–99 and the Piper Chieftain could be retrofitted with four bladed props, as have the Vistaliners, thus converting them to Category C aircraft.

Air Vegas (57) believes that its 15 Beechcraft C–99 aircraft should be deemed Category C since it utilizes the same basic power plant, the PT–6, as the Caravan and the Vistaliner, and has been modified for sightseeing operations to include extra windows. The average price for these aircraft, configured to meet Air Vegas specifications, is in excess of $1,300,000. These aircraft are adequately available and have proven to be cost effective. Furthermore, the FAA studies, which placed the Beechcraft C–99 into Category B, were based on max RPM level 2200 RPM. If the RPM is reduced to 1900 (a reduction of 14 percent), there is an equal reduction of 14 percent in the dB level of the propeller, thus 68.2 dB. Air Vegas operations specifications require pilots to maintain propeller RPM at 1900 and with this power setting a Beechcraft C–99 is well below the Category C cutoff of 78 dB for a 15 passenger aircraft. Air Vegas believes there should be an incentive for decreasing the percent of time audible for the aircraft. Because of the higher speeds achievable by the Beechcraft C–99, as compared to the Vistaliner, the C–99's have an impact for less time.

Scenic Airlines (74) states that the deHavilland DHC–6–300 Twin Otter with quiet propellers and the Cessna 208 (A & B models) must be classified as quiet aircraft technology (Category C). Furthermore, in developing Sound Exposure Level (SEL) dB limits, consideration must be given to the speed of an aircraft. Since disruption of natural quiet is measured in terms of ''Time of exposure'' the faster of two aircraft with the same dB output should be shown as the quieter.

The Grand Canyon Trust (72) states that by defining the aircraft categories in terms of sound exposure level per passenger seat, the FAA obscures the fact that some Category C aircraft (*e.g.*, the Vistaliner) are noisier than some Category A or B aircraft. The Trust further states that unless a cap is established on the number of operations Category C can fly, ultimately there will be no advantage to conversion to certain Category C aircraft. Therefore, the Trust's additional comments assume that such a cap will be implemented.

Clark County (62) states that the FAA should set default noise levels and GCNP noise categories for the aircraft operating in GCNP using methodologies that accurately reflect conditions in GCNP and should validate the noise levels through field-testing. If this were done, some aircraft, such as the Beechcraft C–99 would actually meet Category C standards.

Eagle (54), King (56), and Vision (61) state that the FAA's formulation of the aircraft categories in the NPRM is arbitrary and capricious for the following reasons:

(1) The FAA fails to justify its placement of the dividing line between categories and has not consulted operators on this issue before establishing the categories.

(2) Use of part 36 test results is not appropriate.

(3) The proposed 4–dB distinction between Category A and Category C is inappropriate since it attempts to draw distinctions that cannot be discerned by most humans.

(4) Distinctions between categories fail to account for the effect of speed on aircrafts' ''noiseprint.''

(5) Tests that serve as a certification basis do not simulate actual operating conditions.

(6) Categories discriminate against propeller-driven airplanes.

(7) Proposed Category C could be met by only two types of existing aircraft, one of which is unavailable while the other is prohibitively expensive.

Bell Helicopter Textron (91) states that the FAA's noise analysis incorrectly assumed that there is no lateral attenuation of aircraft sound. The effect of this false assumption is great considering that if the sound exposure levels attributed to aircraft were even 5 dB less, then up to six additional aircraft would be in compliance with the proposed Category C noise efficiency criteria.

FAA Response

While this SNPRM replaces the three noise efficiency categories proposed in the Noise Limitations NPRM, the currently proposed quiet technology designation is based upon the same rationale and criteria. The FAA criteria for ''reasonably achievable'' quiet technology requirements include what is technologically practicable, economically reasonable, appropriate to the aircraft type design, and, in the final analysis, environmentally beneficial. The FAA also set forth the following attributes for any quiet technology designation. Specifically, the designation should:

- Be based on aircraft noise certification (14 CFR part 36);
- Judge fixed- and rotary-wing aircraft on a common basis;
- Correlate with aircraft performance and operation at GCNP;
- Offer basis for incentives; and
- Be manageable.

Noise levels obtained from aircraft noise certification represent the highest quality of data available. The flight tests are conducted under controlled conditions with an FAA representative or designee in attendance to witness the test setup and test activities. Data obtained during these flight tests are corrected to standard reference conditions as prescribed in 14 CFR part 36. The certification tests are designed to acquire noise levels representing the noisiest flight configurations for small propeller-driven airplanes and helicopters. FAA believes that this is appropriate for the GCNP situation as the certification flight configurations are also the noisiest configurations that could be used over the park. Thus, the sightseeing aircraft can be judged equally, fairly, and without the concern that the noise levels are undervalued.

The airport community has many years of experience using the certificated noise levels. FAA publishes these levels in Advisory Circular (AC) 36–1, ''Noise Levels for U.S. Certificated and Foreign Aircraft.'' The current version of this AC is 36–1G, dated August 27, 1997. These data have been used to establish use restrictions, curfews, and noise budgets at some airports in the country. The certificated noise levels are not only available in the advisory circulars, which are updated and published periodically, but the levels are readily available to the aircraft owners from aircraft flight manuals (AFM).

The quiet technology designation based on certificated noise levels is proposed not only because of the long-standing precedent, but also because it eliminates the need for someone to make such measurements in the field. Years of experience with using data obtained from airport noise monitoring systems have shown that noise levels obtained under uncontrolled conditions are highly variable. This problem can only be overcome by obtaining very large samples of measured data to reduce the statistical uncertainty. Thus, FAA believes that a quiet technology designation based on measured data taken at GCNP would be economically unreasonable and susceptible to statistical error.

Unfortunately, there is no single method applicable to all aircraft for determining the certificated noise level. Depending on date of application for type certificate and whether the aircraft is a helicopter or small propeller-driven airplane, the noise level could have been obtained from one of four different tests. With measurements taken for different flight operations, at three different altitudes, and in three different units of noise, it is not possible to directly compare certificated noise levels obtained for helicopters with those of small propeller-driven airplanes. As reported in the study, ''Methodology to Categorize the Noise Efficiency of Air Tour Aircraft in GCNP,'' FAA developed a procedure for: (1) extrapolating from the controlled conditions of a certification test to the operating conditions at GCNP and (2) converting levels to a common noise unit, thus making it possible to judge airplanes and helicopters on a common basis under conditions that pertain to air tour operations over GCNP. As a result of the study, FAA found that it is possible to extrapolate from the certification conditions applicable to helicopters and small propeller-driven airplanes to produce a consistent set of noise levels under conditions similar to those at GCNP.

FAA finds that the noise efficiency concept, which was proposed in the Noise Limitations NPRM and re-proposed in this SNPRM, albeit modified to designate quiet technology, exhibits all of the desired attributes for the quiet technology designation. The concept is technically sound as it takes into account aircraft design, flight configuration, acoustic characteristics, productivity, and economic reasonableness. As the concept is based upon the certificated noise levels, the FAA is able to judge the noise of the commercial sightseeing aircraft consistently, fairly, and without the additional cost and technical problems found in field monitoring. In concert with related actions with respect to the airspace and air tour operations, the quiet technology designation can be an effective means toward substantially restoring natural quiet at GCNP.

The FAA notes that this SNPRM is essentially a definition of quiet technology taking into account the technological capabilities of aircraft available in the used marketplace, including the existence of aircraft type design modifications to reduce noise levels. As this action merely defines quiet technology but does not impose any requirements, the FAA does not expect any economic impact on the operators of GCNP air tours. The FAA seeks comments before moving to future related rulemaking in consultation with the NPS and in coordination with an advisory group composed of general aviation, commercial air tour operations, environmental concerns, and Native American interest.

5. Phase Out of Less Noise Efficient Aircraft

A number of commenters addressed the proposal to phase out noisier aircraft to further reduce noise impacts in GCNP. As described in the Noise Limitations NPRM, less noise efficient aircraft would have been gradually phased out starting in the year 2000 with the phase out of Category A aircraft and continuing through to the end of 2008 at which point all Category B aircraft would be phased out and only Category C aircraft would remain. The phase out would have limited future use of less noise efficient aircraft in GCNP and would also have provided an incentive for the use of the most noise efficient aircraft.

This SNPRM only proposes to define the quiet aircraft technology designation. The quiet technology designation is predicated on the notion that the use of larger, relatively quieter aircraft (on a per seat basis) is helpful in reaching the goal of substantial restoration of natural quiet through a combination of reduction of noise at the source and reduction in the number of tour operations. Under the provisions of section 804 of the Air Tour Act, all

incentives to replace current aircraft with those satisfying the definition must be recommended by the NPOAG. Thus, any proposals to encourage the transition to quiet technology will be addressed in subsequent FAA rulemaking in consultation with the NPS and the NPOAG.

6. Removal of Temporary Cap

A number of commenters addressed the proposal to remove the cap on air tour aircraft for all Category C aircraft. This change was proposed as an incentive for conversion to noise efficient aircraft.

Since the Noise Limitations NPRM, the FAA has issued a final rule that replaced the cap on the number of air tour aircraft with an operations limitation on the annual number of commercial air tour operations in the GCNP SFRA (65 FR 17708). Thus, a discussion of the comments on the removal of the air tour aircraft cap is irrelevant. The Air Tour Act provides that ''Commercial air tour operations by any fixed-wing or helicopter aircraft that employs quiet aircraft technology and that replaces an existing aircraft shall not be subject to the operational flight allocations that apply to other commercial air tour operations of the Grand Canyon, *provided that the cumulative impact of such operations does not increase noise at the Grand Canyon.*'' (*See* section 804(c) of the Act; emphasis added). As discussed below, the FAA does not foresee at this time that the operations limitations would be lifted in any meaningful way since once commercial air tour operations increased, noise would increase, even if all operators used quiet technology aircraft.

As documented in the February 2000 FSEA accompanying the commercial air tour limitation final rule, only 44 percent of the Park (on an annual average day) achieved substantial restoration of natural quiet upon implementation of the air tour limitations and changes to routes and airspace adopted in April 2000. The FAA and NPS note that this percentage may change once the revised east end routes are adopted and implemented. The FAA has evaluated whether the designation of quiet technology requirements, contained in this SNPRM, will enable the FAA to relieve commercial air tour operators from the present commercial air tour operations limitation. More specifically, the FAA conducted studies to determine the extent to which use of quiet technology aircraft could possibly enable air tour operators to increase operations without increasing cumulative noise levels at GCNP pursuant to section 804 of the Air Tour Act.

The FAA test was conducted by assessing the sensitivity of the 25% TA_{12hr} [5] contour to increases in quiet technology aircraft operations using the GCINM. The 25% TA_{12hr} contour has been the measure used in the environmental assessments associated with all GCNP SFRA rulemaking to assess progress towards the goal of substantial restoration of natural quiet. The particular GCNP air tour scenario chosen for this test was the preferred alternative of the February 2000 FSEA that accompanied the April 2000 final rules (65 FR 17708 and 65 FR 17736). Two separate runs of the GCINM were performed; airplane operations on Zuni Reverse and helicopter operations on the Green 1 loop. The analysis found that adding less than four annual airplane operations or three annual helicopter operations would increase the 25% TA_{12hr} contour area by 0.01 sq. mi. FAA chose a hundredth of a square mile as the threshold of significance because contour areas in the GCNP EA documents have been reported to that significant digit.

The above result supports the FAA's preliminary finding that aircraft that meet the quiet technology designation operating without operations limitation will likely cumulatively increase noise in the GCNP. Given that the Air Tour Act only provides relief from the operations limitation when the cumulative impact of such operations does not increase noise at GCNP, the FAA would likely be unable to remove the commercial air tour operations limitation. Removal of the operations limitation will be addressed in subsequent FAA rulemaking in consultation with the NPS and the NPOAG as directed by the Air Tour Act.

7. Other or Alternative Incentives

A number of commenters responded to the FAA's request for comments regarding alternative or additional incentives for operators to convert to noise efficient technology.

Lake Mead Air (26, 53) states that with the conversion to ''quieter aircraft'' several companies will not be able to meet the standard and will sell or close. Other incentives for quiet aircraft technology should be considered such as tax credits or subsidies, for example the FAA could pay the air tour operators not to fly Category A aircraft, similar to soil banks. Furthermore, more noise efficient aircraft should be phased in rather than phasing out the less noise efficient aircraft.

Twin Otter (45) states that it is an oversight that the FAA has not provided for a quiet aircraft corridor in the eastern section of the canyon. Twin Otter then comments on routes proposed in 1996 that are no longer part of this rulemaking.

Twin Otter recommends the following additional incentives for Category C aircraft: (1) Lift the aircraft cap immediately on the number of Category C aircraft that may be operated; (2) eliminate the curfew for Category C aircraft, and if this is not possible, then permit Category C aircraft to operate one hour before and one hour later than curfew hours for conventional aircraft (official sunrise at GCNP is two hours earlier than the curfew permits for most of the summer); (3) roll back the overflights fee for Category C aircraft as an additional incentive; and (4) require helicopters to fly at the highest possible altitude in the Zuni Corridor so that airplanes can conduct tours at a lower altitude and establish the lowest airplane tours in the Zuni for Category C qualifying aircraft.

Grand Canyon Airlines (GCA) (46) supports the concept of the proposed amendment to part 93. GCA also believes that the FAA needs to provide quiet aircraft incentive routes in the eastern region. Category B helicopters are permitted to operate at the lowest possible altitude in the eastern region and they are even encouraged to fly in the most sensitive Dragon Corridor with the lowest altitudes and shortest direct routes. This makes the airplane Category C air tours less attractive than the noisier Category B helicopters in this region. To correct this disparity the Category C aircraft should be given the lowest possible routes in the eastern region. GCA makes the following recommendations: (1) Provide a Category C incentive route over the existing Black 1 route; (2) minimize advantages to Category B helicopter routes by creating new Category C routes that provide superior tour features; (3) waive overflight fees to Category C aircraft; and (4) eliminate caps and curfews on Category C aircraft.

Papillon (55) also supports the timeframe for transition to quiet technology and the guidelines for qualifying aircraft as quiet technology,

[5] The time above (TA) metric provides the duration that aircraft related noise exceed specified sound threshold. For assessment of aircraft noise in GCNP, the $\%TA_{12h}$ represents the percentage of time aircraft are audible during the 12-hour daytime period of primary visitor activity. The 25% TA_{12h} contour (the area where aircraft are audible greater 25% of the time) measures the extent that the criterion for substantial restoration of natural quiet is met. When the 25% TA_{12h} contour for a particular alternative occupies less than half of the area of GCNP then that alternative has achieved substantial restoration of natural quiet at the Park.

but recommends 35 dB as the threshold of substantial natural quiet for the GCNP. The following incentives for quiet technology should be implemented for Category C aircraft only: (1) Eliminate the GCNP overflight fee; (2) create a route across the North Rim (through the Bright Angel Flight-Free Zone); (3) permit Category C aircraft to use alternate routes that may enter flight-free zones to show specific landmarks; (4) establish new curfews of one hour after sunrise and one hour before sunset; and (5) restore the two-way helicopter loop in the Zuni Corridor.

An individual commenter (68) states that more incentives need to be utilized to help air tour operators convert to quiet technology. This commenter suggests the following incentives: (1) Waiving overflight fees and park admission fees for passengers; (2) offering and approving low-cost government loans and tax credits; and (3) establishing new quality view corridors through which only Category C aircraft could fly at lower altitudes.

Scenic Airlines (Scenic) (74) states that while 75 percent of the passengers it flew in 1996 were flown in Category C aircraft about one half of its air tour fleet are Category A aircraft. While Scenic would like to convert these Category A to Category C, it must be provided with incentives, in the form of privileges that operators and passengers can value, before it would voluntarily do so. Operators have only invested in Category C aircraft in the past based on the promise by the NPS that they will be rewarded in the future. If no such rewards materialize there will be a disincentive to convert to Category C's in the future.

Scenic states that the following Category C incentives should be provided: (1) A route through the northern portion of the expanded Bright Angel Flight-Free Zone using the existing Black 1A and Green 1A (SFAR 50–2); (2) a route along the current Brown 3 (SFAR 50–2) departure which goes through the northwest corner of the Toroweap Flight-Free Zone; (3) waiver of curfews in Dragon and Zuni corridors to extend the hours of operation to Daylight hours; (4) waiver of overflight fees; (5) investment tax credits; and (6) low cost government loans.

AirStar Helicopters, Inc. (AirStar) (84) states that the following incentives for transition to noise efficient aircraft should be considered: low cost loans, overflight fee rebates or investment tax credits. AirStar also states that it has already begun the transition to quiet technology.

The Grand Canyon Trust (72) proposes the use of Dragon and Zuni Corridors as quiet aircraft incentives routes for Category C aircraft only.

FAA Response

This SNPRM only proposes to define quiet aircraft technology. Under the provisions of section 804 of the Air Tour Act, all incentives to replace current aircraft with those satisfying the definition must be developed through the consultative process with the NPOAG. Thus, proposals to encourage the transition to quiet technology will be addressed in subsequent FAA rulemaking. The NPOAG will provide advice and recommendations on, among other things, the establishments of routes and corridors for the operation of quiet technology aircraft for tours originating in Clark County, Nevada and for ''local loop'' tours originating at the GCNP Airport in Tusayan, Arizona. The FAA notes that section 804(b) of the Air Tour Act allows such incentive routes ''provided that such routes or corridors can be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands, or safety.''

8. Draft Environmental Assessment (DEA)

In 1996, the DEA analyzed a different Federal action than is now proposed by the FAA. Therefore, the FAA is not pursuing completion of that NEPA document for this SNPRM and the comments received on the DEA are no longer relevant.

Rather, in accordance with FAA Order 1050.1D, the FAA has determined that this proposed rulemaking is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The proposed rule is categorically excluded under FAA Order 1050.1D, Appendix 4, Paragraph 4.j, which covers regulations ''excluding those that if implemented may cause a significant impact on the human environment.'' Unlike the DEA completed with the Noise Limitations NPRM, this proposed rulemaking simply establishes quiet technology designations for air tour aircraft operating in GCNP. It does not impose a phaseout or any alteration of any air tour operator's fleet of aircraft. In addition, the proposed rulemaking does not lift the operations limitation, alter any flight corridors through the Park, or make any change to the SFRA. Finally, the FAA notes that this proposed rulemaking alone has no impact on substantial restoration of natural quiet at GCNP and environmental and economic impacts will depend upon other future incentives yet to be defined. Accordingly, this proposed rulemaking will not individually or cumulatively have a significant effect on the human environment.

Potential Further Action

As proposed, the FAA would designate a standard for quiet technology that would apply to certain aircraft in commercial air tour operations over GCNP. Under the provisions of Section 804 of the Air Tour Act, the implementation of quiet technology will be addressed in subsequent FAA rulemaking in consultation with the NPS and the NPOAG. The NPOAG will provide advice and recommendations on, among other things, the establishments of routes and corridors for the operation of quiet technology aircraft for tours originating in Clark County, Nevada and for ''local loop'' tours originating at the GCNP Airport in Tusayan, Arizona. The FAA notes that section 804(b) of the Air Tour Act allows such incentive routes ''provided that such routes or corridors can be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands, or safety.'' Since the ultimate objective is to determine the role of quiet technology in achieving substantial restoration of natural quiet, the FAA is requesting specific comments to address quiet technology within the context of the implementation issue:

1. How reasonable is the noise efficiency approach (larger aircraft with more passenger seats are allowed to generate proportionally more noise) to define quiet technology and how appropriate is the use of certificated noise level as the basis?

2. What provisions should be made for changes in technology that result in source noise reduction and/or increased noise efficient aircraft designs?

3. What economic and operational incentives should be considered in order to achieve the transition to quieter aircraft and how should the quiet technology designation be used in the establishment of the incentives?

4. Should incentives include a ''flexible'' cap that would permit increasing operations of aircraft based upon the acquisition of leading edge noise efficient technology by operators?

5. Should growth be tied to an incentive system for existing operators to convert their fleet to quiet technology?

6. What operational limitations (phase-out, expanded curfews, noise budgets, quota system, etc.) should be considered and how should the quiet

technology designation be used in the setting of the limitations?

Economic summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation. Since this SNPRM serves only to refine the quiet technology definition applied to air tour aircraft operating in GCNP developed in the Noise Limitations NPRM, and removes all compliance requirements proposed in that NPRM, the expected outcome is to have a minimal impact.

The SNPRM retains the ''noise efficiency'' concept defined by the relationship between the certificated noise level of an aircraft and the number of passenger seats on the typical configuration of that aircraft type as initially proposed in the Noise Limitations NPRM. However, the three principal rulemaking elements of 61 FR 69334 have been eliminated. The SNPRM replaces the three noise efficiency categories that were proposed in the Noise Limitations NPRM and proposes to temporarily continue to rely on the designation of quiet technology aircraft, those that were formerly described as Category C. Furthermore, the SNPRM does not propose any phaseout of air tour aircraft that do not comply with the Category C quiet technology designation. Nor does it include any incentive flight corridors through the park as proposed in December 1996. Finally, as noted above, the SNPRM does not lift the operations limitation on commercial air tour operations conducted in the Park that has replaced the 1996 aircraft cap for those aircraft meeting the Category C noise efficiency standard.

Therefore, this SNPRM is essentially a definition of quiet technology and has negligible economic impact on the operators of GCNP air tours. The FAA seeks public comment before moving to future FAA rulemaking in consultation with the NPS. Future rulemaking would be coordinated with an advisory group composed of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American interests.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action merely defines quiet technology but does not impose any requirements. Therefore, the FAA does not expect this rule to impose any cost on small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small air tour operators.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule to be minimal and, therefore, has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on state, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Consultation with Tribal Governments

Executive Order 13084 provides for consultation and coordination with Indian tribal governments in certain circumstances that are set forth in the executive order. We have discussed above the ways in which we have consulted with Indian tribal governments about this proposed rule and taken their concerns into account. The FAA determined that additional consultations were not necessary because the proposed rule is required by statute and would not impose any substantial direct compliance costs on the communities of Indian tribal governments.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), there are no requirements for information collection associated with the SNPRM.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and recordkeeping requirements.

The Amendment

For reasons set forth above, the Federal Aviation Administration proposes to amend part 93, in Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.303 is amended by adding a definition to read as follows:

§ 93.303 Definitions.

* * * * *

Quiet technology aircraft means an aircraft that is subject to § 93.301 and has been shown to comply with the noise limit specified in appendix A of this part.

* * * * *

3. Appendix A is added to read as follows:

Appendix A to Part 93—GCNP Aircraft Quiet Technology Designation

This appendix contains procedures for determining the quiet technology status for each aircraft subject to § 93.301 determined during the noise certification process as prescribed under part 36 of this chapter. Where no certificated noise level is available, the Administrator may approve an alternative measurement procedure.

1. Aircraft Noise Limit for Quiet Technology

A. For helicopters with a flyover noise level obtained in accordance with the measurement procedures prescribed in Appendix H of 14 CFR part 36, the limit is 80 dB for helicopters having two or fewer passenger seats, increasing at 3 dB per doubling of the number of passenger seats for helicopters having three or more passenger seats. The limit at number of passenger seats of three or more can be calculated by the formula:

EPNL(H) = 80+10log(# PAX seats/2) dB

B. For helicopters with a flyover noise level obtained in accordance with the measurement procedures prescribed in Appendix J of 14 CFR part 36, the limit is 77 dB for helicopters having two or fewer passenger seats, increasing at 3 dB per doubling of the number of passenger seats for helicopters having three or more passenger seats. The limit at number of passenger seats of three or more can be calculated by the formula:

SEL(J) = 77+10log(# PAX seats/2) dB

C. For propeller-driven airplanes with a measured flyover noise level obtained in accordance with the measurement procedures prescribed in Appendix F of 14 CFR part 36 without the performance correction defined in Sec. F36.201(c), the limit is 69 dB for airplanes having two or fewer passenger seats, increasing at 3 dB per doubling of the number of passenger seats for airplanes having three or more passenger seats. The limit at number of passenger seats of three or more can be calculated by the formula:

LAmax(F) = 69+10log(# PAX seats/2) dB

D. In the event that a flyover noise level is not available in accordance with Appendix F of 14 CFR part 36, the noise limit for propeller-driven airplanes with a takeoff noise level obtained in accordance with the measurement procedures prescribed in Appendix G is 74 dB for airplanes having two or fewer passenger seats, increasing at 3 dB per doubling of the number of passenger seats for airplanes having three or more passenger seats. The limit at number of passenger seats of three or more can be calculated by the formula:

LAmax(G) = 74+10log(# PAX seats/2) dB

Issued in Washington, DC on March 18, 2003.

Paul R. Dykeman,

Acting Director, Office of Environment and Energy.

[FR Doc. 03–6918 Filed 3–21–03; 8:45 am]

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Federal Register

Monday,
March 24, 2003

Part III

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 7 and 25

Flavored Malt Beverages and Related Proposals (2001R–136P); Proposed Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 7 and 25

[Notice No. 4]

RIN 1512–AC11

Flavored Malt Beverages and Related Proposals (2001R–136P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau are proposing changes to the beer and malt beverage regulations related to the production, taxation, composition, labeling, and advertising of alcohol beverages marketed as ''flavored malt beverages.'' We are proposing these changes in response to the numerous questions raised by the States and others concerning these alcohol beverages.

The proposed regulation permits the addition of flavorings and other materials containing alcohol to malt beverage products only if the alcohol from such materials constitutes less than 0.5% by volume of the finished product. This document solicits comments on other approaches, including one requiring that a majority of a product's alcohol derives from fermentation at the brewery and also seeks comment on the amount of time necessary to comply with the proposed standards.

By proposing these changes, we seek to ensure that flavored malt beverages comply with the requirements of the Internal Revenue Code of 1986 with respect to their composition, premise where produced, appropriate tax rate, and system of distribution. We also wish to ensure the proper classification of these alcohol beverages under the Federal Alcohol Administration Act so that their labeling and advertising conform to the applicable requirements of the Act and to ensure consumers are adequately informed, and not misled, as to the identity of these products. We believe the proposed changes will clarify the status of flavored malt beverages under these two Federal statutes and will provide guidance to the State regulatory and tax agencies that oversee their taxation and distribution.

DATES: Written comments must be received by June 23, 2003.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 4). See the Public Participation section of this notice for alternative means of commenting.

Copies of this document and the written comments received will be available for public inspection by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890. Copies of this document and of the comments received will also be posted on the TTB Web site at *http://www.ttb.gov.* See the Public Participation section of this notice for further details.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617–557–1323.

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Notes to Readers

A. ATF–TTB Transition

Effective January 24, 2003, the Homeland Security Act of 2002 (Public Law 107–296, 116 Stat. 2135 (2002)) divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. The regulation and taxation of alcohol beverages remains a function of the Department of the Treasury and is the responsibility of TTB. References to the former ATF and the new TTB in this document reflect the time frame, before or after January 24, 2003.[1]

B. Use of Plain Language

In this document, ''we,'' ''our,'' and ''us'' refers to the Department of the Treasury and/or the Alcohol and Tobacco Tax and Trade Bureau (TTB). ''You,'' ''your,'' and similar words refer to members of the alcohol beverage

[1] The new Bureau of Alcohol, Tobacco, Firearms, and Explosives continues to use the ''ATF'' abbreviation and continues to provide some support services to TTB. References to the ''ATF Reference Library'' in this document are to the new bureau's library, which currently supports TTB.

industry and others to whom TTB regulations apply.

I. Background Information

A. What Are Flavored Malt Beverages?

In recent years, flavored malt beverages have become increasingly popular and have gained greater market share. These products differ from traditional malt beverages and beer in several respects. Flavored malt beverages exhibit little or no traditional beer or malt beverage character. Their flavor is derived primarily from added flavors rather than from malt and other materials used in fermentation. Flavored malt beverages are marketed in traditional beer-type bottles and cans, and their alcohol content is similar to most traditional malt beverages—in the 4 to 6% alcohol by volume range.

Although flavored malt beverages are produced at breweries, their method of production differs significantly from the production of other malt beverages or beer. In producing flavored malt beverages, brewers brew a fermented base of beer from malt and other brewing material. Brewers then treat this base using a variety of processes in order to remove malt beverage character from the base; *i.e.*, they remove the color, bitterness, and taste that are generally associated with beer, ale, porter, stout, and other malt beverages. This leaves a base product to which brewers add various flavors, which typically contain distilled spirits, to achieve the desired taste profile and alcohol level.

Although the alcohol content of flavored malt beverages is similar to that of most traditional malt beverages, the alcohol in many of them is derived primarily from the distilled spirits component of the added flavors rather than from the fermentation of malt and other materials. In some cases, as much as 99% of the alcohol in the finished flavored malt beverage product comes from added flavorings containing distilled spirits and not from fermentation in the brewery. Because these alcohol beverages begin with a base of fermented beer, they are made at breweries, taxpaid at the rate applicable to beer, and distributed to the alcohol beverage market through beer and malt beverage wholesalers.

Flavored malt beverages are sold under many proprietary names and include alcohol beverages such as alcoholic lemonades, alcoholic colas, cooler-type products, and other flavored alcohol beverages. In the last two years, brewers have partnered with distilled spirits producers in order to label flavored malt beverages using prominent distilled spirits brand names. Published statistics for calendar year 2001 indicate that flavored malt beverages constitute as much as 5% of the overall U.S. malt beverage market, or as much as 10 million barrels (of 31 gallons each) of the overall malt beverage market of approximately 200 million barrels.

B. What Is Our Authority To Regulate Beer and Breweries?

Beer is a taxed under the Internal Revenue Code of 1986 (IRC). The IRC both defines beer and imposes a Federal excise tax on beer removed from a brewery, or imported into the United States, for consumption or sale. Section 5052(a) IRC defines ''beer'' as:

> * * * beer, ale, porter, stout, and other similar fermented beverages (including saké or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

This statutory definition of beer is restated in our regulations in 27 CFR part 25, Beer.

This definition of beer originated in the internal revenue act passed by Congress in 1862 to help finance the Civil War and has remained essentially unchanged to the present day. (*See* § 50 of the Act of July 1, 1862, 12 Stat. 432, 450.) TTB and its predecessor agencies have long relied on this statutory definition in collecting the Federal excise tax on beer. Under IRC section 5051, the current excise tax on beer is $18 per barrel of 31 gallons, with certain exceptions for qualified small domestic brewers.

The IRC also governs the establishment and bonding of breweries. IRC section 5401 requires a brewer to give notice to the Secretary of the Treasury and file a bond with the Secretary prior to commencing business at a brewery. TTB and its predecessor bureaus have long regulated the establishment and operation of breweries under these statutory provisions.

C. What Is Our Authority to Regulate Malt Beverages?

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 211, defines a ''malt beverage'' as:

> * * * a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

This definition also appears in our regulations in 27 CFR part 7, Labeling and Advertising of Malt Beverages.

The FAA Act gives the Secretary of the Treasury or his designate authority to issue regulations providing the public with information about the identity and quality of malt beverages, and to prevent deception in the labeling and advertising of malt beverages. The FAA Act also requires that persons engaged in the business of wholesaling or importing malt beverages obtain permits. In addition, it requires bottlers or importers of malt beverages to obtain certificates of label approval prior to introducing malt beverages into interstate or foreign commerce. Regulations implementing these FAA Act provisions appear in 27 CFR part 7, Labeling and Advertising of Malt Beverages.

D. What Is Our Authority To Regulate Distilled Spirits?

Since the early days of the Republic, Congress has levied, and the Treasury Department has collected, taxes on distilled spirits. Today, under provisions of the IRC that define and tax distilled spirits, TTB regulates the production, labeling, and taxpayment of distilled spirits. Under other provisions of the IRC, we also oversee the qualification and operation of distilled spirits plants (DSPs).

IRC section 5002(a)(8) defines ''distilled spirits'' as:

> * * * that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

IRC section 5001 imposes Federal excise tax on distilled spirits at the rate of $13.50 per proof gallon. A proof gallon is one liquid gallon containing 50% alcohol by volume (100 proof) at 60° F.

The FAA Act, at 27 U.S.C. 211(a)(5), defines distilled spirits similarly as:

> * * * ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

The FAA Act also gives us the authority to prescribe labeling and advertising regulations for distilled spirits.

The FAA Act requires distillers, blenders, bottlers, wholesalers, and importers of distilled spirits to obtain basic permits. It further requires these persons to obtain certificates of label approval for labels on bottles of distilled

spirits prior to bottling or releasing bottled distilled spirits from customs custody. Regulations implementing these FAA Act provisions appear in 27 CFR Part 5, Labeling and Advertising of Distilled Spirits.

E. Why Are We Concerned With the Production, Labeling, and Taxation of Flavored Malt Beverages?

This proposed rulemaking addresses the question: ''Should certain products currently marketed as flavored malt beverages be classified as malt beverages or distilled spirits under the FAA Act and the Internal Revenue Code?'' The answer to this question affects the rate of tax applicable to them, the premises where they may be produced, the way they are labeled, advertised, marketed, and the distribution system by which they are sold to retailers and consumers. Further, their classification as malt beverages or as distilled spirits may affect State oversight and control of these alcohol beverages.

State regulatory and taxation agencies have expressed concern about flavored malt beverages and have requested that we take action to clarify their status as either malt beverages or distilled spirits. Moreover, through our own examination of these products, we believe that, because of their present formulations, many beverages currently marketed as flavored malt beverages should not be so classified.

This notice proposes significant changes in our regulations issued under both the IRC and the FAA Act.

II. Alcohol Beverage Production

A. Fermentation

Fermentation is the process by which yeast converts sugar into alcohol and carbon dioxide. Both the definition of ''beer'' under IRC section 5052 and ''malt beverage'' under § 211 of the FAA Act focus on fermentation as the source of the alcohol in these products.

B. IRC Definition of Beer

Under the Internal Revenue Code, ''fermentation'' is the determining criteria for defining beer. In 1869, the Commissioner of Internal Revenue ruled that the term ''substitute for malt'' within this definition includes other fermentable substances such as rice, grain of any kind other than malt, sugar, bran, and glucose. In re-enacting the Internal Revenue Code in 1954, Congress specifically included saké, a fermented rice-based beverage, and products similar to saké within the definition of beer for production and taxation purposes. This specific inclusion shows that, while saké and similar products do not resemble beer, ale, porter or stout, Congress intended that such products are to be considered fermented products and taxed at the beer rate. In all cases, the IRC definition of beer hinges ''fermentation.''

C. What Are Nonbeverage Distilled Spirits?

Distilled spirits have thousands of nonbeverage and industrial uses. Distilled spirits are used in solvents, medicines, flavor manufacture, pharmaceutical products, cleaning products, food products, fuels, ink, and many other ordinary items. Generally, the IRC does not require payment of the excise tax, or it permits rebate of most of the excise tax, when distilled spirits are used for nonbeverage or industrial purposes.

Under IRC § 5131, a person may use taxpaid distilled spirits in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume.

The excise tax treatment of distilled spirits used in ''nonbeverage'' products is different because these products are ''unfit for beverage use;'' *i.e.*, an ordinary person would not consume these products for beverage purposes. This criterion does not, however, require that nonbeverage products be poisonous or harmful if consumed, and, indeed, nonbeverage products deemed ''unfit for beverage use'' are often used to produce food and beverage products intended for human consumption.

D. How Are Flavored Malt Beverages Different Than Other Malt Beverages?

Flavored malt beverages are produced at breweries and taxpaid as beer. However, as previously stated, most flavored malt beverages differ from traditional brewery products:

- The beer base is treated to remove taste, aroma, bitterness, and extracts, leaving a base;
- Their taste is derived from added flavors rather than from fermentation of malt and other fermentable materials;
- They have low carbonation;
- They are clear in color, or their color is derived from added flavoring or coloring materials;
- Their alcohol content is derived in large part from the distilled spirits contained in the added flavoring materials, rather than from the fermentation of malt and other materials.

The last characteristic not only sets flavored malt beverages apart from other malt beverages, but also raises the question of whether they should be classified as beer or as distilled spirits.

III. Flavored Malt Beverages Study

A. What Was the Study's Intent?

In order to address the question of the classification of flavored malt beverages, we examined the formulation of 114 alcohol beverage products labeled and marketed as flavored malt beverages. The intent of this study was to find out how these products are produced, what ingredients are used, and where the alcohol in them is derived. This study did not examine malt beverages that are labeled and marketed as flavored beers, flavored ales, and so forth since these types of malt beverages typically have the character of malt beverages and their alcohol is derived primarily from fermentation.

Please note: Since this study examined individual formulas and production batch records furnished by brewers, it contains confidential, proprietary information that is protected from unauthorized disclosure under IRC sections 6103 and 7213, and under the Trade Secrets Act, 18 U.S.C. 1905. Thus, by law, we cannot furnish this study to the public, either on request or under the Freedom of Information Act, without pervasive redactions.

B. What Were the Study's Findings?

For each flavored malt beverage, we examined batch records to determine: (1) The amount of alcohol derived from alcohol flavors added during production, (2) the amount of alcohol derived from fermented material produced at the brewery, and (3) the volume of beer base present in the flavored malt beverage. For the 114 different flavored malt beverages studied, we found the following:

TABLE 1.—ALCOHOL DERIVED FROM ADDED ALCOHOL FLAVORING MATERIALS

Alcohol percentage derived from added alcohol flavors	Number of Flavored Malt Beverages
0–25	4
26–50	0
51–75	5
76–100	105
Maximum Alcohol Derived From Added Alcohol Flavors: 99.98%	Total: 114

TABLE 2.—VOLUME OF BEER BASE PRESENT IN FLAVORED MALT BEVERAGES

Volume of flavored malt beverage derived from fermented beer base (Percent)	Number of Flavored Malt Beverages
0–25	95
26–50	4
51–75	1
76–100	14

C. What Conclusions Have We Drawn From this Study?

It is clear from the study's findings that the great majority of the alcohol in most flavored malt beverages is not derived from fermentation of malt and grain. Instead, it is very clear that most of these products' alcohol is derived from distilled spirits contained in added alcohol flavorings. We found that over 75% of the alcohol in most of the flavored malt beverages studied is derived from alcohol flavoring materials, and that in some cases, this figure rose to more than 99%. In contrast, the alcohol derived from flavorings constitutes less than 25% of the overall alcohol in only 4 of the 114 products studied.

A second finding from this study is that most flavored malt beverages contain very little actual beer. Only 15 out of the 114 flavored malt beverages studied contain as much as 50% by volume fermented beer; the remainder of their volume consists of flavors, water, and other ingredients. Two of the flavored malt beverages studied contain only 1% fermented beer by volume.

IV. Establishing a Standard for Added Alcohol

A. ATF Ruling 96–1

As noted in Reader's Note ''A'' above, references to ATF refer to the agency as it existed in the Department of the Treasury before January 24, 2003. Please note that while the former ATF issued this ruling, it remains in effect and all references to ATF in the ruling should be considered references to TTB. See the Homeland Security Act of 2002, Public Law 107–296, section 1912 (November 24, 2002). This ruling may be accessed on the TTB Web site at: *http://www.ttb.gov/alcohol/info/revrule/revrulex.htm.*

For many years, ATF and its predecessors have allowed brewers to use alcohol flavoring ingredients when producing malt beverages. In fact, ATF recognized this practice in 1996 by issuing Ruling 96–1 (ATF Quarterly Bulletin 1996–1, p. 49). For malt beverages in excess of 6% alcohol by volume (alc/vol), the ruling establishes that a maximum of 1.5% alc/vol may be derived from alcohol flavoring materials. The ruling does not establish a limit on alcohol derived from flavoring materials for malt beverages under 6% alc/vol. Ruling 96–1 also states that ATF would initiate future rulemaking to consider the prohibition, restriction, or limitation on the use of flavor materials containing alcohol at any stage in the production of malt beverages, but that ''pending completion of rulemaking, ATF will allow the continued production or importation of fermented beverages which contain alcohol not solely the result of fermentation at the brewery * * * .''

B. Standard for Added Alcohol and Alcohol From Fermentation

Neither the IRC nor the FAA Act provides a clear statement as to how much, if any, of a beer's or a malt beverage's overall alcohol content may come from added flavors or other alcohol-containing materials or, conversely, how much of their alcohol content must result from fermentation at the brewery. While neither statute sanctions the direct addition of distilled spirits or other alcohol to beer or malt beverages, we and our predecessors have long allowed flavors, including flavors containing alcohol, to be added to these products. For example, flavors may be added to beer to provide a particular flavor character.

Many States have urged us to define flavored malt beverages and establish regulatory limits on the addition of alcohol to beer and malt beverages through the use of flavors. In the absence of such a Federal definition and regulation, several States have said that they will develop their own definitions for flavored malt beverages.

We believe that the definition of ''beer'' in the IRC, which refers to beer, ale, porter, stout, and ''other similar fermented beverages,'' requires that a product must derive a substantial portion of its alcohol from fermentation at a brewery since the definition does not contemplate a product that derives most of its alcohol content from distilled spirits. As our study shows, very few products currently marketed as flavored malt beverages meet this standard.

We also believe that a similar standard should apply to the definition of ''malt beverage'' under the FAA Act, which defines a malt beverage as a product made from the fermentation of malted barley with hops. While the definition in the Act allows for the addition to malt beverages of ''other wholesome food products'' such as flavors, we do not believe that Congress intended for such added materials to be a malt beverage's dominant ingredient or source of most of its alcohol content.

For these reasons, the Treasury Department and TTB propose to delineate how much of the alcohol content of a beer or malt beverage must be derived from fermentation at the brewery, and how much of the product's alcohol content may be derived from alcohol added through the use of flavors and other ingredients containing alcohol.

C. What Is the Significance of 0.5% Alcohol by Volume?

The Department of the Treasury and TTB consider one-half of one percent alcohol by volume (0.5% alc/vol) to be the dividing point between an alcohol beverage subject to internal revenue tax and a beverage containing alcohol that is not subject to tax as an alcohol beverage. This dividing point is recognized in IRC § 5052, which defines beer as containing one-half percent alcohol or more by volume. While the IRC does not establish an alcohol content threshold for wine or distilled spirits, TTB regulations at 27 CFR 24.10 use the same threshold, 0.5% alc/vol, as the distinction between a taxable wine and a beverage that is not subject to tax as wine on removal from a winery. In sum, the Treasury Department and its alcohol taxation agencies have historically used the 0.5% alcohol by volume threshold as a dividing line between alcohol products subject to one type of taxation or another.

The presence of alcohol in many beverage products is widespread, from juice, soft drinks, and soda, to cereal beverages made by brewers. For soft drinks and some other beverages, the small amount of alcohol present is usually derived from the use of flavoring materials containing distilled spirits. However, where the alcohol content in such a beverage product reaches 0.5% alc/vol, the product would be subject to the internal revenue excise tax for distilled spirits products. Such beverage products containing as much as 0.5% alc/vol clearly meet the statutory definition of distilled spirits.

In the absence of specific statutory language stating otherwise, we believe that IRC § 5052 supports a regulation classifying any beer or malt beverage product containing 0.5% or more alcohol by volume that is derived from distilled spirits, or from distilled spirits in the form of flavors or other materials, as a distilled spirits product. Under our proposed rule, such products would be taxed and classified as distilled spirits.

We welcome comments on other limits that may be appropriate for the addition of alcohol through flavoring or other materials to beer or malt beverage products. For example, we believe that IRC section 5052 also would support the issuance of a regulation requiring that a beer or malt beverage product must directly derive a majority of the alcohol in a product taxed as beer from fermentation. In other words, less than 50% of the alcohol in a beer or malt beverage could come from alcohol added through flavoring or other materials. We would also welcome comments relating to the affect of our proposed regulation on the viability of products currently on the market. We are particularly interested in comments addressing whether products on the market could be made currently under our proposed standard, or if not, on the time required to implement such a standard.

V. Proposed Rule Language for Beer

A. Proposal for Alcohol Flavors in Beer

The Treasury Department and TTB propose to establish a new production standard for beer in their regulations issued under the IRC. Under proposed 27 CFR 25.15, to be taxed as ''beer'' a product must contain less than 0.5% alc/vol derived from added materials, including flavorings, that contain distilled spirits. An alcohol beverage containing 0.5% or more alc/vol derived from distilled spirits in flavors or other materials will be considered distilled spirits. Such an alcohol beverage must be produced at a distilled spirits plant, must be taxpaid at the rate applicable to distilled spirits products, must be labeled and advertised as a distilled spirits specialty, and must be distributed by persons holding basic permits as wholesalers of distilled spirits.

B. Comments Sought on Beer Definition

We request comments on this proposed standard for beer. Specifically, we solicit any studies, laboratory trials, or other empirical data that may exist for added alcohol in flavored malt beverages. We seek comments on how adoption of this proposed added alcohol standard would affect taste, shelf life, stability, or other characteristics of these products.

We also seek comments on whether production practices are available to produce flavored malt beverages with the desired product profile and still comply with the proposed standard. Finally, we seek comments on whether another standard, such as a standard requiring that a minimum of 51% of the alcohol in a malt beverage be derived from fermentation at the brewery, would be more appropriate for these products. Any suggestions or comments for differing added alcohol standards should be backed with data, facts, or studies to support the suggestion. We also encourage you to provide any other useful information or opinions on this issue.

Since any standard applied would be a substantial change from existing regulations and policy, we also seek comment on the amount of time required to comply with any new rule that limits the amount of alcohol that may be added to products taxed as beer. Comment should be directed toward the amount of time necessary to develop and implement new formulas for these products, and possible costs involved.

VI. Proposed Standards for Flavored Malt Beverages

A. How Does the Presence of Alcohol Flavors Affect Malt Beverages?

The FAA Act definition of ''malt beverage'' was intended to cover all products made by brewers at the time of the FAA Act's enactment in 1935. This definition requires that a malt beverage be made from the fermentation of malted barley with hops, with or without the addition of ''other wholesome food products.'' For years brewers have used many substances including starches, sugars, honey, fruits, flavors (including those containing alcohol), colors, and adjuncts to aid in fermentation, clarification, and preservation of malt beverages. Federal alcohol regulation and tax agencies, including the former ATF and the new TTB, have allowed these ingredients in malt beverage products.

Federal administrators of the FAA Act have seldom examined the question of what constitutes ''wholesome food products'' other than to state that the substances added to malt beverages must be sanctioned as safe for food use by the Food and Drug Administration and have some intended purpose in the production of a malt beverage. We and our predecessors have considered flavorings containing distilled spirits to be wholesome food products and have allowed their use in producing malt beverages.

The extensive use of flavors containing distilled spirits introduces a significant amount of distilled spirits into a malt beverage. Adding alcohol or distilled spirits in this fashion reduces the need to use fermented malt in the production of a malt beverage in order to acquire alcohol content. When carried to extremes, the result is a product in which much of its alcohol content comes from added flavorings rather than from fermentation at a brewery and a product in which less than half of its overall volume is a result of fermentation.

We believe that the definition of flavored malt beverages in the FAA Act supports limiting the amount of alcohol in the beverage that is not ''made by the alcoholic fermentation * * * of malted barley with hops * * *.'' Further, we believe that to label a beverage that derives most of its alcohol content from added alcohol flavors as a malt beverage is inherently misleading since consumers would expect that malt beverages derive a significant portion of their alcohol content from fermentation of barley malt and other ingredients at the brewery.

B. Proposal for Alcohol Flavors in Malt Beverages

Thus, the Department of the Treasury and TTB propose to adopt a standard for malt beverages that limits the alcohol content derived from alcohol flavorings and other materials to less than one-half of one percent alcohol by volume (0.5% alc/vol). We propose to add a new section, § 7.11, Standards for malt beverages, that specifies this limit. We welcome comments on this proposed standard and on other possible standards, which are consistent with the FAA Act definition of malt beverage, such as requiring that the alcohol content of a malt beverage be ''predominantly;'' *i.e.;* at least 51%, derived from fermentation at the brewery. We further seek comments on the time required to implement any such added alcohol standard for malt beverages.

VII. Proposed Alcohol Content Labeling Statement for Flavored Malt Beverages

A. Differentiation of Flavored Malt Beverages From Other Alcohol and Nonalcohol Beverages

Due to the unique character of these new types of flavored malt beverages many consumers have limited experience with them. At the same time, due to their label appearance and the use of the brand names of well-known distilled spirits, we believe that consumers are likely to be confused as to their actual alcohol content. We believe that consumers are likely to assume that some flavored malt beverages are high in alcohol content like the distilled spirits whose brand names they bear. Likewise, while other brands of flavored malt beverages are not labeled with distilled spirits brand names, their labeling or packaging,

which often resembles that of nonalcoholic new age beverages such as juices, sodas, bottled water, and energy drinks, is likely to confuse consumers as to their identity as alcohol products.

Because of the likely consumer confusion over the actual alcohol content, or range of alcohol, in flavored malt beverages, we believe that a mandatory requirement to label these products with their alcohol content will provide substantial consumer benefit. We believe labeling flavored malt beverages with their alcohol content will help consumers identify them as malt beverages and will help consumers to understand that their alcohol content is similar to that of traditional malt beverages. Alcohol content labeling would also help draw attention to any flavored malt beverages that might lie outside the customary 4 to 6% alcohol by volume range for malt beverages. For example, if a flavored malt beverage contains 10% alc/vol, alcohol content labeling would inform consumers about this important distinction.

Since there is no regulatory provision in part 7 that uniquely identifies flavored malt beverages, we propose that mandatory alcohol content labeling apply to any malt beverage that contains alcohol from a source other than from fermentation at a brewery. For example if a brewer adds a flavoring containing alcohol to a malt beverage, whether it is labeled as a flavored malt beverage, a flavored beer or ale, or a specialty malt beverage product, the requirement to display alcohol content on the label would apply.

B. Alcohol Content Statement on Brand Label

Beyond simply requiring the alcohol content to be displayed on labels of flavored malt beverages, we believe additional benefit accrues to consumers when it appears on the brand label. Since the brand label is the most prominent label, and is the principal display panel on the package, consumers are more likely to read information, including alcohol content information, displayed on the brand label as opposed to information appearing on the back label. Thus, we propose to amend § 7.22(a) to require that you list the alcohol content of a flavored malt beverage on its brand label. This proposed requirement differs from that for alcohol content labeling for other malt beverages since, under § 7.22(b), the alcohol content statement may appear on any label.

C. Form of Alcohol Content Statement and Tolerances

We propose no changes to the form of the alcohol content statement or the tolerances provided in § 7.71, or to the type size requirements in § 7.28.

With regard to the actual statement of alcohol content, § 7.71(a)(3) requires labeling with the percentage of alcohol by volume, which may be expressed in one of several ways: (1) ''Alcohol X percent by volume;'' (2) ''alcohol by volume X percent;'' (3) '' X percent alcohol by volume;'' or (4) '' X percent alcohol/volume.'' You may use the abbreviations ''alc'' and ''vol'' and the symbol ''%'' in lieu of ''percent.''

Tolerances are prescribed at § 7.71(c). This section allows alcohol content of a malt beverage to vary by plus or minus 0.3% from the stated label alcohol content.

Type size requirements for statement of alcohol content appear in § 7.28(b)(3). For containers of ½ pint or less, the minimum type size is 1 mm. For containers larger than ½ pint, the minimum size is 2 mm. Type size may not exceed 3 mm for containers of 40 fl. oz. or smaller, or exceed 4 mm for containers larger than 40 fl. oz.

D. Effect of State Law

In the case of all malt beverages, the penultimate clause of the FAA Act makes Federal labeling regulations applicable only to the extent that State law imposes similar requirements on malt beverages sold within the State. Specifically, the proposed regulations apply to malt beverage labeling and advertising in interstate commerce only to the extent that State law imposes similar requirements on malt beverages that are exclusively intrastate. You must comply with these regulations to the extent that the State imposes similar requirements on malt beverages that are to be consumed or sold within that State. For example, if a State law requires that the alcohol content statement appear in a form different than provided by Federal regulations, then State law will govern the labeling of malt beverages sold or introduced into commerce in that State.

E. Discussion of Alcohol Content Labeling for All Malt Beverages

In *Rubin* v. *Coors Brewing Co.*, 514 U.S. 476 (1995), the U.S. Supreme Court upheld a lower court ruling in favor of Coors Brewing Co., which had challenged the provisions of the FAA Act and 27 CFR part 7 regulations prohibiting statements of alcohol content on malt beverage labels. The Court found that brewers have a right to inform consumers of their products' alcohol content. Since this 1995 Supreme Court ruling, we added § 7.71 to the part 7 malt beverage labeling and advertising regulations to permit the optional listing of alcohol content on malt beverage labels. (*See* T.D. ATF–339, 58 FR 21228.)

We believe that there are good reasons to require labels of all malt beverages to bear an alcohol content statement; however, we are not proposing to do so in this notice. To the maximum extent possible, we wish to restrict this notice of proposed rulemaking to proposals concerning flavored malt beverages and not further complicate this notice with proposals that relate to all malt beverages. Thus, we propose to require mandatory alcohol content labeling only for malt beverages that contain alcohol from added flavors or other material containing alcohol. We may examine the question of mandatory alcohol content labeling for all malt beverages in a future notice of proposed rulemaking.

VIII. Use of Distilled Spirits Terms in Malt Beverage Labeling and Advertising

A. Background

Some newer flavored malt beverages use the names of well-known brands of distilled spirits as part of their own brand names. The labels of these flavored malt beverage brands are also often designed to resemble the labels of the distilled spirits brand used in their name. In addition, when first introduced, some of these flavored malt beverages bore label statements referring to the class and type of distilled spirits used in producing the nonbeverage flavoring component.

For these reasons, many State regulatory and taxing authorities questioned the classification of flavored malt beverages and requested that we take action to clarify their status as either malt beverages or distilled spirits.

B. ATF Ruling 2002–2

In response to these concerns, ATF issued Ruling 2002–2 on April 8, 2002. Please note that while the former ATF issued this ruling, it remains in effect and any references to ATF in the ruling should be considered references to TTB. This ruling may be accessed on the TTB Web site at: *http://www.ttb.gov/alcohol/info/revrule/revrulex.htm.*

ATF issued this ruling to clarify permissible labeling and advertising practices for flavored malt beverages, and to give brewers and importers labeling guidelines that would serve to prohibit the misleading impression that flavored malt beverages are distilled

spirits or contain distilled spirits. ATF also restated the holdings made in Ruling 96–1 concerning the use of alcohol flavorings in producing flavored malt beverages and concerning the requirements for filing statements of process for malt beverages. With respect to labeling and advertising of malt beverages, Ruling 2002–2 held:

• Held, for brand names.

—The use of a brand name of a distilled spirits product as the brand name of a malt beverage is not in itself misleading.

—The use of a distilled spirits term found in the standards of identity in 27 CFR part 5 such as whisky, rum, vodka, brandy, gin, and so forth, as the brand name for a malt beverage is misleading. ATF will not approve labels where a distilled spirits term is used as the brand name for a malt beverage.

—The use of a coined term that is similar to or resembles a class and type of distilled spirits as part of the brand name for a malt beverage will be examined on a case-by-case basis to determine if it is misleading as to the identity of the product.

• Held, for class and type statements including statements of composition and fanciful names.

—The use of a distilled spirits terms found in the standards of identity in 27 CFR part 5, or the use of a distilled spirits brand name, in the statement of composition or in the fanciful name for a flavored malt beverage is misleading as to the identity of the product. ATF will no longer approve labels where distilled spirits terms or brand names appear in the fanciful name or the statement of composition for a malt beverage.

—Use of a cocktail term as the fanciful name of a malt beverage is not misleading if there is no misleading impression about the identity of the product, based on the overall labeling and advertising of the product.

• Held, for all other labeling and advertising statements.

—The use of any distilled spirits terms found in the standards of identity in 27 CFR part 5, or of distilled spirits brand names, appearing in any other place on a malt beverage label or in an advertisement for a malt beverage will be presumed to be misleading. Examples of statements that will be presumed to be misleading include:

+ ''Tastes like rum.''
+ ''The flavor of brandy.''
+ ''Serve like a liqueur.''
+ ''Made by Old Sourmash Whisky Company, City, State.''

—Use of cocktail terms on a label or advertisement for a malt beverage is not in itself misleading if there is no misleading impression about the identity of the product, based on the overall labeling or advertising of the product.

C. Proposal for Labeling and Advertising

We propose to amend §§ 7.29 and 7.54 to incorporate the provisions of Ruling 2002–2. Although brewers and importers have revised their labels and advertising to comply with the ruling, we wish to place these provisions in our part 7 regulations. By doing so, you may more easily refer to, and comply with, these labeling and advertising provisions. Moreover, by proposing these requirements, the public, the alcohol beverage industry, and State regulatory agencies will have the opportunity to comment and provide input on these regulations.

In 1968, ATF added provisions to the regulations in Part 4, Labeling and Advertising of Wine, to prohibit labeling and advertising statements that imply that wine products are similar to distilled spirits, or imply that wine is made with or contains distilled spirits. (*See* §§ 4.39 and 4.64.) We propose to add similar language to the malt beverage regulations at §§ 7.29 and 7.54. These proposed part 7 regulatory provisions would prohibit a labeling or advertising statement or representation which tends to create the impression that a malt beverage:

• Contains distilled spirits (other than from ''nonbeverage'' flavors containing alcohol),

• Is similar to a distilled spirit, or

• Has intoxicating qualities.

A statement of alcohol content on a malt beverage label is permitted under this proposal. In accord with Ruling 2002–2, the use of a brand name of a distilled spirits product as the brand name of a malt beverage is permitted. However, the use of a distilled spirits brand name in any other malt beverage labeling or advertising contexts would be prohibited under this proposal. The use of a cocktail name would not be considered a reference to distilled spirits if the overall formulation, label, or advertisement does not present a misleading impression about the identity of the product.

We welcome comments on this proposal.

IX. Filing Formulas for Fermented Beverages

A. Current Statement of Process Requirement

Existing regulations at 27 CFR 25.67 require you to file a statement of process with TTB's National Revenue Center in Cincinnati, Ohio as part of your Brewer's Notice for any fermented beverage that you intend to market under a name other than ''beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or ''malt liquor.'' Under § 25.76, you must file an amended Brewer's Notice if you make changes to an approved statement of process.

When you file a statement of process with the National Revenue Center, a specialist at TTB's Advertising, Labeling and Formulation Division in Washington, DC examines the proposed statement of process in order to ensure that authorized materials will be used, to determine the correct class and type, and to ensure that the fermented product may be made at a brewery.

B. Regulatory Proposal for Filing a Formula

We wish to describe more clearly the fermented products for which you must file a formula. Additionally, we believe that all brewers should be able to file their statements of process or formulas directly with our Advertising, Labeling and Formulation Division in Washington, DC. For these reasons, we propose to replace the statement of process requirement found at §§ 25.62 and 25.67 with a formula requirement.

1. Requirements for Filing Formulas

We believe current §§ 25.62 and 25.67, which require you to file a statement of process for any product not marketed as a ''beer,'' ''ale,'' and so forth, are vague and lead to questions as to when a formula is required. For example, if you intend to produce a flavored beer, you have been required to file a formula although this requirement is not clear in the current regulation. Similarly, if you add coloring or flavoring material to a product that you intend to market as a beer, it is unclear if you are required to file a statement of process when, in fact, you are required to file one because of the use of these added materials.

Proposed § 25.55 requires you to file a formula with TTB for certain fermented products that you intend to make at your brewery. For the purposes of tax classification and label evaluation, products for which you must file a formula include: saké, flavored saké, and sparkling saké, products to which you add any material containing alcohol such as nonbeverage flavors, products to which you add coloring or natural or artificial flavors, or any product to which you add fruits, herbs, spices, or honey.

Under this proposed rule, you must also file a formula for any fermented

product that will undergo special processing or filtration, or undergo any other process not used in traditional brewing. The use of reverse osmosis, ion exchange treatments, filtration that changes the character of beer or removes material from beer, concentration or reconstitution of beer, and freezing or superchilling of beer, are examples of processes for which you must file a formula with TTB. You are not required to file a formula for traditional brewing processes such as pasteurization, filtration prior to bottling, filtration in lieu of pasteurization, centrifuging (for clarification), lagering, carbonation, and the like.

You must currently file your formula prior to producing the fermented product at your brewery. Proposed § 25.55(c) permits you to produce certain fermented beverages for research and product development purposes without receiving formula approval. Under proposed § 25.55(c), you could not sell or market these products until receiving formula approval.

2. Filing Formulas

Under the proposed rule, you must file your formula in duplicate directly with TTB's Advertising, Labeling and Formulation Division in Washington, DC. After approval, we will return one copy to you. You may make copies of this approved formula for use at any of your breweries where the formula is valid. A copy of this formula will become part of the required records kept at any individual brewery where you make products using the formula. These proposed regulations do not require a Government form for your formula, although we are considering use of a form like ATF Form 5120.29, Formula and Process for Wine, or requiring both beer and wine formulas to be filed on this form.

Under the proposed rule, you may file one formula to cover production of a fermented product made at any brewery that you own or operate. You may not use your approved formula to cover production of a fermented product at a brewery that you do not operate, such as when you have beer produced for you under contract by another brewer. Also, when you file a formula to cover production of a fermented product at more than one of your breweries, you must identify each brewery where the formula is valid by including each brewery's name, address, and brewery registry number on the formula.

3. Information Required in Formulas

Proposed § 25.57 lists the information that you must include in a formula. This section spells out this information in more detail than does existing §§ 25.62 and 25.67 relating to statements of process. Proposed § 25.57 also requires you to provide information required in your statements of process by Rulings 94–3, 96–1, and 2002–2.

Under the proposed rule, your formula must list each ingredient used in the production of a fermented product and the quantity of that ingredient or a range of the quantity. If you indicate use of a range of an ingredient, the range may not be so wide as to render the formula meaningless. For example, a formula that indicates use of ingredients as ''water 0–100 gallons, flavors 0–10 gallons, beer base 0–500 gallons,'' has limited value in determining what kind of product will be made. Therefore any range of ingredients indicated in a formula must be ''reasonable.'' We seek comment on means to quantify in the regulations what a ''reasonable'' range of ingredients should be.

If flavors are present in your fermented product, you must include: (1) The name of the flavor; (2) the product number, if any; (3) the name and location of the flavor manufacturer; (4) the TTB or ATF formula number and approval date, if any, of the flavor; (5) and the alcohol content of the flavor.

If you use flavors containing alcohol, or other ingredients containing alcohol, proposed § 25.57 imposes additional requirements. You must indicate in your formula: (1) The volume and alcohol content of the beer base; (2) the maximum volumes of flavors or other ingredients containing alcohol; (3) the alcohol strength of flavors or other materials containing alcohol; (4) the alcohol contribution to the finished product made by flavors and ingredients containing alcohol; and (5) the final volume and alcohol strength of the finished product. We will use this information to determine the amount of alcohol in a fermented product that is not derived from fermentation at the brewery and whether the proposed product meets the proposed definition of beer in this notice.

Under the proposed rule, you must also describe in detail any special process that you use in producing your fermented product. This information will help us to determine whether a particular process may be distillation and thus not eligible to be conducted on brewery premises. It will also help us determine the product classification of a proposed brewery product.

4. Superseding Formulas

Under proposed § 25.58, you must file a formula superseding an existing formula if you change a product's ingredients or production process. In this case, ''change'' means to add a new ingredient or process, to eliminate an ingredient or process, or to change the quantity of an ingredient outside of an approved range. When you file a superseding formula you may give it the same serial number as the superseded formula, but you must indicate that it is a superseding formula, such as ''Formula No. 2, Superseding, 3–04–2003.'' We will cancel a formula that you supersede.

5. Previously Approved Statements of Process

Your previously approved statements of process (SOP) will remain valid after the adoption of these regulations provided the finished product under the SOP is in compliance with the new requirements relating to the definition of beer in proposed § 25.15. You will not need to notify us or take any other action regarding these documents. After these regulations become effective, you must comply with the formula requirements or supercede statements of process for any new formulas that you intend to use.

C. Comments Sought on Formula Proposal

We welcome comments on the proposed regulations for the preparation and filing of formulas. We are especially interested to know if the proposed system will be easier and less confusing than the present statement of process requirement.

X. Samples

We propose to add a new section, § 25.53, regarding the submission of samples. This section recognizes our authority to require a brewer to submit a sample of a beer or an ingredient used for producing beer. We occasionally examine samples of beer or ingredients in conjunction with our review of statements of process or formulas and in order to determine the proper tax classification of fermented products. This proposal merely incorporates this existing statutory authority in our part 25 regulations.

XI. Formulas and Samples for Imported Malt Beverages

We propose amending § 7.31 by placing in the part 7 regulations our statutory authority to require an importer to submit a formula to us in conjunction with the filing of a certificate of label approval, ATF Form 5100.31. Similarly, we propose to place in the part 7 regulations our authority to require importers to submit samples of a malt beverage or samples of

ingredients used in producing a malt beverage. Occasionally, we must examine a statement of process or analyze samples of a malt beverage in order to determine the proper classification of a product, whether a particular product is a malt beverage, or whether a product is correctly labeled under part 7 regulations. We welcome comments on this proposal.

XII. Public Participation

A. Comments Requested

The Department of the Treasury and TTB request comments from all interested parties on the proposals contained in this notice.

We specifically request comments on other standards or approaches that would be appropriate as an alternative or addition to any final rule, including one that would limit the presence of alcohol derived from added flavors or other materials to not more than 49% of the alcohol volume of the finished product. In developing the final rule, Treasury and TTB will carefully re-evaluate the proposed standard in light of all comments and suggested alternative standards and approaches and will adopt the most appropriate standard or approach.

We also specifically request comments on:

- The proposed amendments to our regulations relating to the production, labeling, and composition of products marketed as flavored malt beverages;
- The proposed definitions for beer and malt beverages requiring these products to be composed primarily of alcohol from fermentation and that limit the contribution of alcohol from added flavors or other ingredients containing alcohol to less than 0.5% alcohol by volume;
- The proposed requirement that malt beverages containing alcohol derived from added flavors or other ingredients containing alcohol bear a mandatory alcohol content statement on their brand labels;
- Whether products currently on the market could be made under our proposed standard or under an alternative standard;
- The amount of time required to comply with any new restrictions on adding alcohol to beer and malt beverages;
- The new formula filing requirements for brewers and importers who wish to produce or import beer or malt beverages containing added flavors, added colors, or which undergo processing not customary in the production of traditional beers; and
- While we believe that our proposal is consistent with the definitions in the Internal Revenue Code and the FAA Act, flavored malt beverages that contain a significant amount of added alcohol may not have been contemplated by Congress at the time of the statutes' enactment. Therefore, we also seek comments on whether Treasury and TTB should seek legislation that would specifically address the treatment of such products, and whether such legislation is necessary to avoid unintended economic consequences of the application of the statute under this rule.

We also specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

B. What Is a Comment?

In order for a submission to be considered a ''comment,'' it must clearly indicate a position for or against the proposed rule or some part of it, or must express neutrality about the proposed rule. Comments that use reasoning, logic, and, if applicable, good science to explain the respondent's position are most persuasive in the formation of a final rule.

To be eligible for consideration, comments must:

- Contain your name and mailing address;
- Reference this notice number;
- Be legible and written in language generally acceptable for public disclosure;
- Contain a legible, written signature if submitted by mail or fax; and
- Contain your e-mail address if submitted by e-mail.

To ensure that the public is able to access our office equipment, comments submitted by fax must be no more than five pages in length when printed on 8½ by 11 inch paper. Comments submitted by mail or e-mail may be of any length.

C. How May I Submit Comments?

By mail: You may send written comments by mail to the address shown in the **ADDRESSES** section of this notice.

By fax: You may submit comments by facsimile transmission to 716–434–8041. We will treat faxed transmissions as originals.

By e-mail: You may submit comments by e-mail by sending the comments to *nprm@ttb.gov.* We will treat e-mailed transmissions as originals.

By online form: You may also submit comments using the comment form provided with the online copy of this proposed rule on the TTB Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* We will treat comments submitted via the Web site as originals.

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request in writing to the Administrator within the 90-day comment period. The Administrator, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

D. How Does TTB Use the Comments?

We will carefully consider all comments that we receive on or before the closing date. We will not acknowledge receipt of comments or reply to individual comments. We will summarize and discuss pertinent comments in the preamble of any subsequent notices or the final rule published on this subject.

E. May I Review Comments Received?

You may view copies of the comments received in response to this notice of proposed rulemaking by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone 202–927–7890. You may request copies of the comments at 20 cents per page by writing to the ATF Reference Librarian at the above address.

For the convenience of the public, we will also post comments received in response to this notice on the TTB Web site. All comments posted on our Web site will show the name of the commenter, but will not show street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access online copies of the comments on this rulemaking, visit *http://www.ttb.gov/alcohol/rules/index.htm*, and click on the ''View Comments'' button under this notice number.

F. Will TTB Keep My Comments Confidential?

We cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public in the ATF Reference Library. We may also post the comment on our Web site. (*See ''May I Review Comments Received?''*) Finally, we may disclose the name of any person who submits a comment and quote from the comment in the preamble to a final rule on this subject. If you consider your material to be confidential or inappropriate for disclosure to the

public, you should not include it in the comments.

XIII. Regulatory Analyses and Notices

A. Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because we are not proposing any new or revised recordkeeping requirements. We are only proposing to clarify when a formula must be filed with TTB and, for the purpose of efficiency, we propose to change the place where within TTB these formulas are filed. In the future, we may develop a specific form for this information collection.

The Office of Management and Budget has previously approved the information collection and recordkeeping provisions contained in proposed §§ 25.55 through 25.58 under OMB control number 1512–0045, in accordance with the requirements of the Paperwork Reduction Act. This information collection and the related recordkeeping requirements are currently contained in §§ 25.62 and 25.67.

B. Does the Regulatory Flexibility Act Apply to This Proposed Rule?

We certify under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this notice will not have a significant impact on a substantial number of entities. We believe that 10 or fewer qualified small breweries actually manufacture flavored malt beverages subject to this rule. We specifically solicit comments on the number of small breweries that may be affected by this rule and on the impact of this rule on those breweries. We ask that any small brewery that believes that it would be significantly affected by this rule to let us know and tell us how it would affect you.

Pursuant to § 7805(f) of the Internal Revenue Code of 1986, we have submitted this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

C. Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment because no effect of $100 million or more flows from this rule and because any effect flows directly from the underlying statutes.

XIV. Drafting Information

Various personnel of the Alcohol and Tobacco Tax and Trade Bureau and the Department of the Treasury drafted this document.

List of Subjects

27 CFR Part 7

Advertising, Authority delegations, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 25

Beer, Claims, Electronic fund transfers, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

The Proposed Rule

For the reasons set forth in the preamble, the Department of the Treasury and the Alcohol and Tobacco Tax and Trade Bureau propose to amend the regulations in title 27, Code of Federal Regulations, as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

1. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

2. We amend § 7.10 by revising the definition of ''malt beverage'' to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to malt beverages appear in § 7.11.

* * * * *

3. We amend Subpart B by adding a new § 7.11 to read as follows:

§ 7.11 Standards for malt beverages.

The following standards apply to a fermented product that is considered a malt beverage under this part.

(a) Alcohol flavoring materials and other ingredients containing alcohol may be used in producing a malt beverage provided these alcohol ingredients constitute less than 0.5 percent alcohol by volume (0.5% alc/vol) of the finished malt beverage. For example, a finished malt beverage of 5.0% alc/vol must derive more than 4.5% alc/vol from the fermentation of barley malt and other materials, and must derive less than 0.5% alc/vol from the addition of alcohol flavors or other ingredients containing alcohol.

(b) A malt beverage may be filtered or processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

4. We amend § 7.22 by adding a new paragraph (a)(5) to read as follows:

§ 7.22 Mandatory label information.

There shall be stated:

(a) On the brand label:

* * * * *

(5) Alcohol content in accordance with § 7.71, for malt beverages that contain any alcohol derived from added flavors or other ingredients containing alcohol.

* * * * *

5. We amend § 7.29 by revising paragraph (a) and by adding a new paragraph (a)(7) to read as follows:

§ 7.29 Prohibited practices.

(a) *Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other material accompanying such containers to the consumer must not contain:

* * * * *

(7)(i) Any statement, design, device, or representation which tends to create the impression that a malt beverage:

(A) Contains distilled spirits; or

(B) Is similar to a distilled spirit; or

(C) Has intoxicating qualities.

(ii) A label statement of alcohol content in conformity with § 7.71 is not considered a prohibited practice in violation of this section. Use of a brand name of a distilled spirits product as a malt beverage brand name is permitted. Use of a cocktail name as a brand name or fanciful name is permitted if the overall malt beverage formulation and label do not present a misleading impression about the identity of the product.

* * * * *

6. We amend § 7.31 by adding paragraph (e) to read as follows:

§ 7.31 Label approval and release.

* * * * *

(e) *Formula and samples.* The Administrator may require you to submit a formula for a malt beverage, and a sample of any malt beverage or ingredients used in producing a malt beverage in conjunction with the filing of a certificate of label approval on ATF Form 5100.31.

7. We amend § 7.54 by revising paragraph (a) and by adding a new paragraph (a)(8), to read as follows:

§ 7.54 Prohibited statements.

(a) *General prohibition.* An advertisement of malt beverages must not contain:

* * * * *

(8)(i) Any statement, design, device, or representation which relates to alcohol content or which tends to create the impression that a malt beverage:

(A) Contains distilled spirits; or

(B) Is similar to a distilled spirit; or

(C) Has intoxicating qualities.

(ii) A label statement of alcohol content in conformity with § 7.71 is not considered a prohibited practice in violation of this section. Use of a brand name of a distilled spirits product as a malt beverage brand name is permitted. Use of a cocktail name as a brand name or as a fanciful name is permitted if the overall malt beverage advertisement does not present a misleading impression about the identity of the product.

* * * * *

PART 25—BEER

8. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

9. We amend § 25.11 by revising the definition of ''beer'' to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including saké and similar products) of any name or description containing one-half of one percent or more alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt. Standards for the beer tax rate appear in § 25.15.

* * * * *

10. We amend subpart B by adding an undesignated center heading and a new section, § 25.15, to read as follows:

Standards for Beer Tax Rate

§ 25.15 What standards must be met to qualify as a fermented product to be taxed at the beer rate?

(a) You may use barley malt, malted grains other than barley, unmalted grains, sugars, syrups, molasses, honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials for fermenting beer.

(b) You may use alcohol flavoring materials, taxpaid wine, and other ingredients containing alcohol in producing beer, provided these alcohol ingredients contribute less than 0.5 percent alcohol by volume of the finished beer. For example, a finished beer of 5.0% alc/vol must derive more than 4.5% alc/vol from the fermentation of ingredients at the brewery. Added flavors or other ingredients containing alcohol may constitute less than 0.5% alc/vol of the finished beer.

11. We amend Subpart F by adding two undesignated center headings, and by adding new §§ 25.53, and 25.55 through 25.58, to read as follows:

Subpart F—Miscellaneous Provisions

* * * * *

Samples

§ 25.53 Am I required to furnish samples of my fermented products or ingredients?

The appropriate TTB officer may, at any time, require you to submit samples of:

(a) Cereal beverage, saké, or any fermented product produced at the brewery.

(b) Materials used in the production of cereal beverage, saké, or any fermented product.

(c) Cereal beverage, saké, or any fermented product, in conjunction with the filing of a formula. (26 U.S.C. 5415, 5555, 7805(a))

Formulas

§ 25.55 Are formulas required for my fermented products?

(a) *For what fermented products must a formula be filed?* You must file a formula with TTB if you intend to produce:

(1) Any fermented product that will be treated by any special processing, filtration, or other methods of manufacture that change the character of beer or remove material from beer. The removal of any volume of water from beer, filtration of beer to remove color, flavor, or character, the separation of a beer into different components, reverse osmosis, concentration of beer, and ion exchange treatments are examples of processes that require you to file a formula under this section.

(2) Any fermented product to which taxpaid wine or any flavor or other ingredient containing alcohol will be added.

(3) Any fermented product to which coloring or natural or artificial flavors will be added.

(4) Any fermented product to which fruits, herbs, spices, or honey will be added.

(5) Saké, flavored saké, or sparkling saké.

(b) *Are separate formulas required for different products?* You must file a separate formula for each fermented product for which a formula is required.

(c) *When must I file a formula?* (1) Except as provided in paragraph (2), you may not produce a fermented product for which a formula is required until you have filed and received approval of a formula for that product.

(2) You may, for research and product development purposes, produce a fermented product without an approved formula, but you may not sell or market this product until you receive approval of a formula.

(d) *How long is my formula approval valid?* Your formula approved under this section remains in effect until you supersede it with a new formula, until you voluntarily surrender it to TTB, or until TTB cancels or revokes it.

(e) *Are my previously approved statements of process valid?* Your statements of process approved before [*EFFECTIVE DATE OF FINAL RULE*] are considered approved formulas under this section, provided the finished product under the statement of process is in compliance with § 25.15. You do not need to resubmit any approved statements of process. (26 U.S.C. 5415, 5555, 7805(a))

§ 25.56 How do I file a formula?

(a) *What are the general requirements for filing a formula?*

(1) You must identify each brewery where the formula is valid by including each brewery name, address, and the brewery registry number for each brewery for which the formula applies.

(2) You must serially number each formula, commencing with ''1'' and continuing in numerical sequence.

(3) You must date and sign each formula.

(4) You must submit two copies of each formula to TTB.

(b) *Where do I file a formula?* File your formulas with the Chief, Advertising, Labeling and Formulation Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226. (26 U.S.C. 5401, 7805)

§ 25.57 What ingredient and process information must I include on a formula?

(a) For each formula you must list—

(1) Each separate ingredient and the specific quantity used, or a reasonable range of quantities used.

(2) For fermented products containing flavorings, you must include: The name of the flavor; the product number, if any; the name and location (city, State and TTB company code) of the flavor manufacturer; the TTB or ATF formula number and approval date, and the alcohol content of the flavor.

(3) For formulas that include the use of taxpaid wine or other ingredients containing alcohol, you must explicitly indicate:

(i) The volume and alcoholic content of the beer base;

(ii) The maximum volumes of the flavoring materials or other ingredients to be used;

(iii) The alcoholic strength of the flavoring materials or other ingredients;

(iv) The overall alcohol contribution to the finished product provided by the addition of flavoring materials or other ingredients containing alcohol; and

(v) The final volume and alcoholic content of the finished product.

(b) You must describe in detail each process used to produce a fermented beverage.

(c) You must state the alcohol content of the fermented product at each step in production after fermentation, and the alcohol content of the finished product.

(d) At any time, an appropriate TTB officer may require you to file additional information concerning a fermented product, ingredients, or processes, in order to determine whether a formula should be approved, disapproved, or if the approval of a formula should be continued. (26 U.S.C. 5415, 5555, 7805(a))

§ 25.58 When must I file a new or superseding formula?

(a) You must file a new or superseding formula if you—

(1) Create an entirely new fermented product that requires a formula;

(2) Add new ingredients to an existing formulation;

(3) Delete ingredients from an existing formulation;

(4) Change the quantity of an ingredient used from the quantity or range of usage in an approved formula;

(5) Change an approved processing, filtration, or other special method of manufacture that requires the filing of a formula; or

(6) Change the contribution of alcohol from flavor or ingredients that contain alcohol.

(b) When you file a new or superseding formula with TTB, follow the procedures described above in §§ 25.56 through 25.57.

(c) When you file a new formula, you must give it a new formula number.

(d) A superseding formula is one that replaces an existing formula. You must inform TTB when you file a superseding formula. When TTB approves a superseding formula, we will cancel your previous formula. You may use the same formula number for a superseding formula as the formula it replaces, but you must annotate the formula number to indicate it is a superseding formula (For example, Formula 2, superseding). (26. U.S.C. 5401)

§ 25.62 [Amended]

12. We amend § 25.62 by removing and reserving paragraph (a)(7).

§§ 25.67 and 25.76 [Removed]

13. We amend Subpart G by removing and reserving §§ 25.67 and 25.76.

Signed: March 4, 2003.

John J. Manfreda,

Acting Administrator.

Approved: March 17, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 03–6855 Filed 3–21–03; 8:45 am]

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Federal Register

Monday,
March 24, 2003

Part IV

The President

Executive Order 13290—Confiscating and Vesting Certain Iraqi Property

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13290 of March 20, 2003

Confiscating and Vesting Certain Iraqi Property

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 12722 of August 2, 1990,

I, GEORGE W. BUSH, President of the United States of America, hereby determine that the United States and Iraq are engaged in armed hostilities, that it is in the interest of the United States to confiscate certain property of the Government of Iraq and its agencies, instrumentalities, or controlled entities, and that all right, title, and interest in any property so confiscated should vest in the Department of the Treasury. I intend that such vested property should be used to assist the Iraqi people and to assist in the reconstruction of Iraq, and determine that such use would be in the interest of and for the benefit of the United States.

I hereby order:

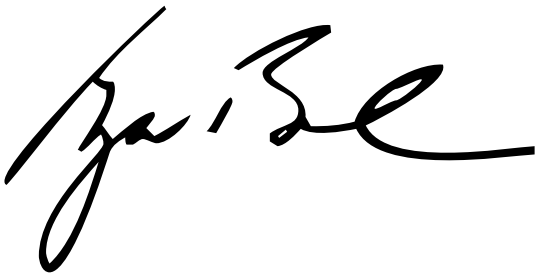
Section 1. All blocked funds held in the United States in accounts in the name of the Government of Iraq, the Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or the State Organization for Marketing Oil are hereby confiscated and vested in the Department of the Treasury, except for the following:

(a) any such funds that are subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoy equivalent privileges and immunities under the laws of the United States, and are or have been used for diplomatic or consular purposes, and

(b) any such amounts that as of the date of this order are subject to post-judgment writs of execution or attachment in aid of execution of judgments pursuant to section 201 of the Terrorism Risk Insurance Act of 2002 (Public Law 107 297), provided that, upon satisfaction of the judgments on which such writs are based, any remainder of such excepted amounts shall, by virtue of this order and without further action, be confiscated and vested.

Sec. 2. The Secretary of the Treasury is authorized to perform, without further approval, ratification, or other action of the President, all functions of the President set forth in section 203(a)(1)(C) of IEEPA with respect to any and all property of the Government of Iraq, including its agencies, instrumentalities, or controlled entities, and to take additional steps, including the promulgation of rules and regulations as may be necessary, to carry out the purposes of this order. The Secretary of the Treasury may redelegate such functions in accordance with applicable law. The Secretary of the Treasury shall consult the Attorney General as appropriate in the implementation of this order.

Sec. 3. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
March 20, 2003.

[FR Doc. 03–7160
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.