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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–03–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2003–2004 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2003–2004 marketing year, which begins on June 1, 2003. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 857,444 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 808,528 pounds and 38 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 2003, through May 31, 2004.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2003–2004 marketing year, which begins on June 1, 2003. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of its eight members present, met on October 2, 2002, and recommended salable quantities and allotment percentages for both classes of oil for the 2003–2004 marketing year. With six members in favor and one opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 857,444 pounds and 45 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 808,528 pounds and 38 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2003–2004 marketing year, which begins on June 1, 2003. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 55 percent of the annual U.S. production of Scotch spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 72 percent was produced in the regulated production area in the Far West. The Far West continued to produce an average of about 69 percent of the world's Scotch spearmint oil supply during the period from 1980 to 1990. International production characteristics have changed since 1990, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world

sales has averaged about 45 percent since 1990.

Between 1996 and 2000, the Committee's marketing strategy for Scotch spearmint oil centered around an attempt to regain a substantial amount of the Far West's historical share of the global market for this class of oil. Although still interested in retaining a sizable share of the global market, the Committee has since refocused its strategy on establishing a salable quantity that is largely determined by information on price and available supply as they are affected by the estimated trade demand.

Although sales increased somewhat, the Far West's market share as a percentage of total world sales did not increase on average. The price paid to producers for Scotch spearmint oil continued to decline from 1996–1997 until 2000–2001, when the price fell to $8.00 per pound. The price increased somewhat to $8.40 in 2001–2002. The Committee, as well as spearmint oil producers and handlers attending the October 2, 2002, meeting, continue to believe that such returns are generally below the cost of production for most producers. The most recent information available from the Washington State University Cooperative Extension Service (WSU) indicates that Scotch spearmint oil production costs are between $13.87 and $14.62 per pound.

The Committee estimates that acreage of Scotch spearmint has declined from about 10,000 acres in 1998 to about 4,000 acres currently. The reduction in acreage is directly attributable to the relatively low level of producer returns. Based on the reduced Scotch spearmint acreage, the Committee estimates that production for the current season (the 2002–2003 marketing season) will be about 472,600 pounds.

The Committee calculated the 2003–2004 Scotch spearmint oil salable quantity (857,444 pounds) and allotment percentage (45 percent) by utilizing sales estimates for 2003–2004 Scotch oil as provided by several of the industry's handlers, as well as historical and current Scotch oil sales levels. Between June 1, 2002, and September 27, 2002, 415,914 pounds of Scotch oil were sold, a level below the most recent five-year average of 490,926 pounds. Handlers are estimating that sales for the 2002–2003 marketing year may range from a low of 700,000 pounds to a high of 825,000 pounds. With 387,374 pounds carried in to the current marketing year and an estimated 472,608 pounds being produced, the total available supply this year, including the 415,914 pounds already sold, is 859,982 pounds.

The recommendation for the 2003–2004 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the farmers producing the oil. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, unlike Scotch, over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, unlike Scotch, most of the world's supply of Native spearmint is produced in the United States.

The current, flat market contributed to the Committee's recommendation for a salable quantity of 808,528 pounds and an allotment percentage of 38 percent for Native spearmint oil for the 2003–2004 marketing year. The supply and demand characteristics of the current Native spearmint oil market are keeping the price relatively steady at about $9.00 per pound—a level the Committee considers too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from $10.26 to $10.92 per pound.

Although Native spearmint acreage has decreased about 11 percent over the last year, the Committee estimates that over a million pounds of Native oil is expected to be produced this year. With sales in early October 2002 approximating the five-year average of about 500,000 coupled with the June 1, 2002, carry-in of 202,872 pounds will likely produce a surplus of oil, adding to the nearly 1.2 million pounds already in reserve. Handlers are estimating that about 918,750 pounds of Native spearmint oil, on average, may be sold during the 2003–2004 marketing year. This estimate, combined with the information available regarding current supply and price, helped lead the Committee to its recommendation for a 2003–2004 salable quantity of 808,528 pounds. When considered in conjunction with the estimated carry-in of 104,562 pounds of oil on June 1, 2003, the recommended salable quantity results in a total available supply of Native spearmint oil next year of about 913,090 pounds.

Thus, with over 90 percent of the world production currently located in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

Despite the downward trend in the price of both classes of spearmint oil in recent years, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from about $4.00 per pound to about $12.50 per pound during the period between 1968 and 1980. Excluding the most recent four marketing years, prices since the order's inception have generally stabilized at about $11.00 per pound for Native spearmint oil and at about $13.00 per pound for Scotch spearmint oil. However, the prices for both classes of oil have dropped over the last few years due to several factors, including the general uncertainty being experienced through the U.S. economy and the continuing overall weak farm situation, as well as an abundant global supply of spearmint oil. As noted earlier—although lower than what producers believe to be viable—prices currently appear to be stable at about $8.00 for Scotch and $9.00 for Native.

The Committee based its recommendation for the salable quantity and allotment percentage for each class of spearmint oil for the 2003–2004 marketing year on the information discussed above, as well as the data outlined below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2003—43,782 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand of 816,200 pounds and the revised 2002–2003 marketing year total available supply of 859,982 pounds. The 2002–2003 marketing year total available supply was revised due to differences in the carry-in estimated on October 11, 2001, and the actual carry-in on June 1, 2002, as well as producer deficiencies on June 1, 2002. A producer is deficient when the producer is unable or unwilling to produce oil equal to his or her salable quantity and is unable to fill this deficiency from reserve pool oil or excess oil from another producer. When prices are below a producer's cost of

production, they generally reduce acres and produce less oil.

(B) Estimated trade demand for the 2003–2004 marketing year—822,200 pounds. This figure represents the Committee's estimate based on the average of the estimates provided by producers at five Scotch spearmint oil production area meetings held in September 2002, as well as estimates provided by handlers and others at the October 2, 2002, meeting. Handler trade demand estimates for the 2003–2004 marketing year ranged from 750,000 to 800,000 pounds. The average of sales over the last five years was 912,209 pounds.

(C) Salable quantity required from the 2003–2004 marketing year production—778,418 pounds. This figure is the difference between the estimated 2003–2004 marketing year trade demand (822,200 pounds) and the estimated carry-in on June 1, 2003 (43,782 pounds).

(D) Total estimated allotment base for the 2003–2004 marketing year—1,905,430 pounds. This figure represents a one-percent increase over the revised 2002–2003 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—40.9 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 percent. This recommendation is based on the Committee's determination that a decrease from the current season's allotment percentage of 45 percent to the computed 40.9 percent would not adequately supply the potential 2003–2004 market. The recommended level of 45 percent is slightly higher than the 22-year average of sales.

(G) The Committee's recommended salable quantity—857,444 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2003–2004 marketing year—901,226 pounds. This figure is the sum of the 2003–2004 recommended salable quantity (857,444 pounds) and the estimated carry-in on June 1, 2003 (43,782 pounds).

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2003—104,562 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand of 900,000 pounds and the revised 2002–2003 marketing year total available supply of 1,004,562 pounds.

(B) Estimated trade demand for the 2003–2004 marketing year—875,000 pounds. This figure is based on input from producers at the five Native spearmint oil production area meetings held in September 2002, from handlers, and from Committee members and other meeting participants at the October 2, 2002, meeting. The average estimated trade demand provided at the five production area meetings was 907,000 pounds, whereas the average handler estimate was 918,750 pounds. According to the Committee, the more conservative estimate chosen for the 2003–2004 trade demand figure reflects a general lack of 2003 contract offers as of the October 2, 2002, meeting.

(C) Salable quantity required from the 2003–2004 marketing year production—770,438 pounds. This figure is the difference between the estimated 2003–2004 marketing year trade demand (875,000 pounds) and the estimated carry-in on June 1, 2003 (104,562 pounds).

(D) Total estimated allotment base for the 2003–2004 marketing year—2,127,706 pounds. This figure represents a one percent increase over the revised 2002–2003 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision normally involves a minimal amount of spearmint oil.

(E) Computed allotment percentage—36.2 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—38 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the five production area meetings (38.6 percent), and input from producers and handlers at the October 2, 2002, meeting.

(G) The Committee's recommended salable quantity—808,528 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2003–2004 marketing year—913,090 pounds. This figure is the sum of the 2003–2004 recommended salable quantity (808,528 pounds) and the estimated carry-in on June 1, 2003 (104,562 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 857,444 pounds and 45 percent and 808,528 and 38 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices and the anticipated supply and trade demand during the 2003–2004 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2003–2004 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2003–2004 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2003–2004 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines

for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil, which should be produced for next season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are 7 spearmint oil handlers subject to regulation under the order, and approximately 98 producers of Class 1 (Scotch) spearmint oil and approximately 100 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 11 of the 98 Scotch spearmint oil producers and 13 of the 100 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2003–2004 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their mint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this action.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products at retail such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

Instability in the spearmint oil sub sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers.

The significant variability is illustrated by the fact that between 1980 and 2001, the coefficient of variation (CV) of northwest spearmint oil production was about 0.24. The CV is a standard measure of variability above and below the average production level of 1,880,727 pounds. Production in the shortest crop year was about 48 percent of the 22-year average and the largest crop was approximately 164 percent. A key consequence is that in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

Over the 22-year period, the CV for spearmint oil prices was about 0.13,

well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carry-out. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the available supply during the 2003–2004 marketing year for both classes of oil at 1,814,356 pounds, and that the expected carry-in will be 148,344 pounds. Therefore, with volume control, sales by producers for the 2003–2004 marketing year should be limited to 1,665,972 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2003–2004 producer allotments are based, are 45 percent for Scotch and 38 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.57 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. Northwest producer prices for both classes of spearmint oil averaged $8.86 for 2000 and 2001, based on National Agricultural Statistics Service data, continuing a downward decline in recent years. The severe surplus situation for the spearmint oil market that would exist without volume controls in 2003–2004 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Scotch spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee also considered various alternative levels of volume control for Scotch spearmint oil, including leaving the percentage the same as the current season, increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion in which there was no support for increasing the percentage and minimal support for decreasing it, the Committee chose to remain at the current level (45 percent). One Committee member voted in favor of establishing an allotment percentage of 40 percent due to his belief that anything more would not help improve the current depressed prices producers are receiving for their oil.

The Committee also discussed alternative allotment percentage levels for Native spearmint oil. With the current price for Native spearmint oil lower than the 20-year average, and demand fairly flat, the Committee, after considerable discussion, determined that 808,528 pounds and 38 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2003–2004 marketing year. With a market situation similar to that of Scotch, none of those in attendance at the October 2, 2002, meeting were in support of a higher level of volume regulation, and only a few voiced support for levels less than 38 percent. After considerable discussion, the Committee unanimously supported the recommendation contained herein.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2003–2004 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from about $4.00 per pound to about $12.50 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980. For much of the 1990's, prices had stabilized at about $13.00 per pound for Scotch spearmint oil and about $11.00 per pound for Native spearmint oil.

Over the last four years, however, large production and carry-in inventories have contributed to declining prices, despite the Committee's efforts to balance available supplies with demand. Further, over the same period, prices have ranged from $8.00 to $11.00 per pound for Scotch spearmint oil and between $9.00 to $10.00 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on March 12, 2003 (68 FR 11751). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 20-day comment period ending April 1, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2003–2004 marketing year begins on June 1, 2003. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.222 is added to read as follows:

(**Note:** This section will not appear in the Code of Federal Regulations.)

§ 985.222 Salable quantities and allotment percentages—2003–2004 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2003, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 857,444 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 808,528 pounds and an allotment percentage of 38 percent.

Dated: April 29, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–11026 Filed 5–2–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 71, and 73

RIN 3150–AH09

Filing and Notification Requirements for the Shipments of Certain Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on March 26, 2003 (68 FR 14528), that revised filing and advance notification requirements for the shipments of certain radioactive materials. This action corrects erroneous references to the organizational listing, ''Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response.''

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Karcagi, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6701, e-mail: *kxk2@nrc.gov*, or Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6557, e-mail: *PGB@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published a final rule in the **Federal Register** on March 26, 2003 (68 FR 14528). This document is necessary to correct the references, ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security, to ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response.'' The erroneous references appear in each part and

various sections of the March 26, 2003, final rule.

§ 70.20b [Corrected]

■ 1. In § 70.20b(f)(1), (f)(2)(ii), (f)(2)(iii), and (g)(1), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response''.

§ 71.97 [Corrected]

■ 2. In § 71.97(c)(1) and (f)(1), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and incident Response''.

§ 73.26 [Corrected]

■ 3. In § 73.26(i)(6), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response.''

§ 73.27 [Corrected]

■ 4. In § 73.27(b), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response'' wherever they appear.

§ 73.67 [Corrected]

■ 5. In § 73.67(e)(7)(ii), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response.''

§ 73.71 [Corrected]

■ 6. In § 73.71(a)(4), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response''.

§ 73.72 [Corrected]

■ 7. In § 73.72(a), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response'' wherever they appear.

§ 73.73 [Corrected]

■ 8. In § 73.73(a)(1) and (b), the words, ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response''.

§ 73.74 [Corrected]

■ 9. In § 73.74(a)(1) and (b), the words ''Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security'' are corrected to read ''Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response''.

Dated in Rockville, Maryland, this 28th day of April, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–10860 Filed 5–2–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–18–AD; Amendment 39–13139; AD 2003–09–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to modify the aft power distribution box and the aft ram air duct. This AD is the result of reports of two incidents involving temporary loss of all attitude display information. The actions specified by this AD are intended to prevent moisture from entering the aft power distribution box through the aft ram air duct, which could result in electrical power failure. Such failure could lead to loss of all attitude display information during flight.

DATES: This AD becomes effective on May 13, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 13, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before June 20, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–18–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–18–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–18–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bryan Easterwood, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4132; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received reports of two incidents involving temporary loss of all attitude display information during flight on certain Raytheon Model 390 airplanes. Through investigation and testing, we discovered that moisture is entering the aft power distribution box through the aft ram air duct, which could freeze and/or cause corrosion to form in the left-hand and right-hand generator relays, battery tie relay, and the essential bus relay. This condition could cause the relays to fail in the open position or fail in the mid position and result in loss of power.

Raytheon issued Safety Communiqué No. 222, dated April 2002, to inform the owners/operators that power to the standby electrical bus can be restored by placing the Battery switch in the STBY position to allow continued flight and landing.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in electrical power failure. Such failure could lead to loss of all attitude display information during flight.

Is there service information that applies to this subject? Raytheon has

issued Mandatory Service Bulletin SB 24–3606, Issued: April, 2003; and Mandatory Service Bulletin 24–3544, Issued; November, 2002.

What are the provisions of this service information? These service bulletins include procedures for:

- Modifying the aft power distribution box by replacing part number SM400D79 (left-hand and right-hand generator relays and battery tie relay) with part number SM400D79–1 relays, and replacing part number SM150D22 (essential bus relay) with part number SM150D22–1 relay; and
- Modifying the aft ram air duct.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

- The unsafe condition referenced in this document exists or could develop on other Raytheon Model 390 airplanes of the same type design;
- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service bulletins.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

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

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in loss of all attitude display information during flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–18–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–09–10 Raytheon Aircraft Company: Amendment 39–13139; Docket No. 2003–CE–18–AD.

(a) *What airplanes are affected by this AD?* This AD applies to Model 390 airplanes, serial numbers RB–1 through RB–64, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent moisture from entering the aft power distribution box through the aft ram air duct, which could result in electrical power failure. Such failure could lead to loss of all attitude display information during flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Remove the aft power distribution box and: (i) Inspect the left-hand and right-hand generator relays and the battery tie relay to determine if they are part number SM400D79 (or FAA-approved equivalent part number); (ii) Replace part number SM400D79 with part number SM400D79–1 relays (or FAA-approved equivalent part number); (iii) Inspect the essential bus relay to determine if it is part number SM150D22 (or FAA-approved equivalent part number); and (iv) Replace part number SM150D22 relay with part number SM150D22–1 relay (or FAA-approved equivalent part number) (unless already accomplished in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 24–3544, Issued: November, 2002)	Within the next 10 hours time-in-service (TIS) after May 13, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 24–3606, Issued: April, 2003.
(2) Remove and modify the aft ram air duct. If the procedures in Raytheon Aircraft Mandatory Service Bulletin SB 24–3544, Issued: November, 2002, have already been accomplished, only the procedures specified in Raytheon Aircraft Mandatory Service Bulletin SB 24–3606, Issued: April, 2003, Issued: April, 2003, need be accomplished.	Within the next 10 hours TIS after May 13, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 24–3606, Issued: April, 2003, and Raytheon Aircraft Mandatory Service Bulletin SB 24–3544, Issued: November, 2002.
(3) Only install part number SM400D79–1 (left-hand and right-hand generator relays and battery tie relay) (or FAA-approved equivalent part number); and part number SM150D22–1 (essential bus relay) (or FAA-approved equivalent part number).	As of May 13, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Bryan Easterwood, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4132; facsimile: (316) 946–4107.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 24–3606, Issued: April, 2003, and Raytheon Aircraft Mandatory Service Bulletin SB 24–3544, Issued; November, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on May 13, 2003.

Issued in Kansas City, Missouri, on April 23, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10726 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14931; Airspace Docket No. 03–ACE–34]

Modification of Class D Airspace; and Modification of Class E Airspace; Kansas City Downtown Airport, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Kansas City Downtown Airport, MO has been renamed Kansas City Charles B. Wheeler Downtown Airport, MO. An examination of controlled airspace for Kansas City Downtown Airport, MO revealed a discrepancy in the location of the Riverside VHF Omni-directional Range (VOR)/Distance Measuring Equipment (DME) used in the legal description for the Kansas City Downtown Airport, MO Class E airspace area.

The intended effect of this rule is to replace ''Kansas City Downtown Airport, MO'' in the titles of Class D and Class E4 airspace areas with ''Kansas City Charles B. Wheeler Downtown Airport, MO,'' to replace ''Kansas City Downtown Airport, MO'' with ''Kansas City Charles B. Wheeler Downtown Airport, MO'' in the legal descriptions of these airspace areas, to incorporate the current position of the Riverside VOR/DME in the Class E4 airspace area legal description and to comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14931/ Airspace Docket No. 03–ACE–34, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the titles of the Class D airspace of the Class E airspace are identified as an extension to the Class D airspace area at Kansas City Downtown Airport MO. It renames the airspace areas ''Kansas City Charles B. Wheeler Downtown Airport, MO'' and replaces the former airport name with the new airport name in the legal descriptions. This amendment also updates the location of the Riverside VOR/DME in the legal description of the Class E airspace area. It brings the legal description of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautic charts. Class D airspace areas area published in paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as an extension to a Class D or Class E Surface Area are published in paragraph 6004 of the same FAA Order. The Class D and Class E airspace designations, listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Under a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14931/Airspace Docket No. 03–ACE–34.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D Kansas City Charles B. Wheeler Downtown Airport, MO

Kansas City Charles B. Wheeler Downtown Airport, MO
(Lat. 39°07′24″ N., long. 94°35′34″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.2-mile radius of Kansas City Charles B. Wheeler Downtown Airport; excluding that airspace within the Kansas City, MO Class B airspace area.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E4 Kansas City Charles B. Wheeler Downtown Airport, MO

Kansas City Charles B. Wheeler Downtown Airport, MO
(Lat. 39°07′24″ N., long. 94°35′34″ W.)
Riverside VOR/DME
(Lat. 39°07′13″ N., long. 94°35′48″ W.)

That airspace extending upward from the surface within 1.3 miles each side of the Riverside VOR/DME 043° radial extending from the 4.2-mile radius of the Kansas City Charles B. Wheeler Downtown Airport to 5.3 miles northeast of the VOR/DME and within 1.3 miles each side of the Riverside VOR/DME 215° radial extending from the 4.2-mile radius of the airport to 5.3 miles southwest of the VOR/DME and within 1.8 each side of the Riverside VOR/DME 013° radial extending from the 4.2-mile radius of the airport to 9.2 miles north of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on April 23, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11030 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14348; Airspace Docket No. 03–ACE–5]

Establishment of Class E Surface Area Airspace; and Modification of Class D Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on Friday, April 11, 2003, (68 FR 17729) [FR Doc. 03–8568]. It addresses comments received regarding this Docket that were inadvertently overlooked in the final rule determination.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On Monday, February 10, 2003, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify Class D airspace at Topeka, Forbes Field, KS (68 FR 6677) [FR Doc. 03–3267]. The proposal was to establish a Class E surface area at Topeka, Forbes Field, KS for those times when the air traffic control tower (ATCT) is closed. It also proposed to modify the Class D airspace and its legal description by incorporating the revised Topeka, Forbes Field, KS airport reference point. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. On Friday, April 11, 2003, the FAA issued a final rule (68 FR 17729) [FR Doc. 03–8568] that included the statement ''No comments objecting to the proposal were received.'' This statement was incorrect. Responses to the proposal were inadvertently overlooked when the final rule was issued. This action addresses those comments.

■ According, pursuant to the authority delegated to me, the publication on Friday, April 11, 2003, of the final rule (68 FR 17729) [FR Doc. 03–8568] is corrected as follows:

■ On page 17730, Column 1, first paragraph, last two lines, change ''No comments objecting to the proposal were received'' to read: ''There were four responses to the proposal, one of which was an objection. The mayor of Topeka, KS, the Topeka, Forbes Field airport manager and the manager of the Topeka, Forbes Field Federal Contract Tower all supported the proposal. Mr. Randy Hansen, of the Experimental Aircraft Association (EAA), submitted the sole objecting comment. Mr. Hansen stated that the EAA felt the increase in protective airspace was not warranted for the limited volume of aircraft using the airfield during the times the proposed airspace would be in effect and that there was a lack of safety data to support the change in airspace at Topeka Forbes Field. The FAA does not concur with Mr. Hansen's comment. Numerous large military aircraft operate in and out of Topeka, Forbes Field. Mission requirements dictate that these aircraft conduct night operations. When conducting night operations the aircraft often return to Topeka, Forbes Field after the ATCT is closed. A Class E surface area at Topeka, Forbes Field, KS will afford a greater margin of safety, during low weather conditions, not only for the military aircraft but also for other aircraft operating in the vicinity of Topeka, Forbes Field.''

Issued in Kansas City, MO, on April 21, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11032 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14933; Airspace Docket No. 03–ACE–36]

Modification of Class E Airspace; Pratt, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: A National Geodetic Survey (NGS) of Pratt Industrial Airport, KS redefined the airport reference point effective March 31, 2003. Class E controlled airspace at Pratt, KS is defined, in part, by the Pratt Industrial Airport airport reference point. This action corrects discrepancies between the previous and revised airport reference points by modifying the Pratt, KS Class E airspace area and its legal description. It incorporates the revised Pratt Industrial Airport airport reference point in the Class E airspace legal description and brings the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14933/ Airspace Docket No. 03–ACE–36, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Pratt, KS. It incorporates the revised Pratt Industrial Airport airport reference point into the legal description of this airspace area and brings the Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been

controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14933/Airspace Docket No. 03–ACE–36.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory Action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Pratt, KS

Pratt Industrial Airport, KS
(Lat. 37°42′06″ N., long. 98°44′49″ W.)
Pratt NDB
(Lat. 37°43′26″ N., long. 98°44′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Pratt Industrial Airport and within 2.6 miles each side of the 360° bearing from the Pratt NDB extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on April 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11029 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13971; Airspace Docket No. 02–AAL–08]

Establishment of Class E Airspace; Marshall, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Marshall, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This rule results in new Class E airspace upward from 700 ft. above the ground at Marshall, AK.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, December 12, 2002, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700′ above the surface at Marshall, AK (67 FR 19710–19711). The proposal was made to create enough Class E airspace to contain aircraft executing two new SIAPs, Area Navigation-Global Positioning System (RNAV GPS) Runway 04, and RNAV (GPS) Runway 22, to the Marshall Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K. *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Marshall, Alaska. Additional Class E airspace is being created to accommodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Marshall Airport, Marshall, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Marshall, AK [New]

Marshall Airport, AK

(Lat. 61° 51′ 53″ N., long. 162° 01′ 28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Marshall Airport.

* * * * *

Issued in Anchorage, AK, on April 18, 2002.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–11022 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14932; Airspace Docket No. 03–ACE–35]

Modification of Class E Airspace; Hays, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace areas at Hays, KS and their legal descriptions. Hays Municipal Airport, KS has been renamed Hays Regional Airport, KS. There is a discrepancy in the Hays Regional Airport airport reference point used in the legal description of the Hays, KS Class E airspace surface area. The intended effect of this rule is to amend the airport name in the Hays, KS Class E airspace areas and their legal descriptions, to incorporate the correct Hays Regional Airport airport reference point, to amend the title of the Class E airspace area extending upward from 700 feet above the surface at Hays, KS and to comply with criteria of FAA Order 7400.2E, Procedures for Handling Airspace Matters.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14932/Airspace Docket No. 03–ACE–35, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Hays, KS Class E airspace areas. Hays Municipal Airport, KS has been renamed Hays Regional Airport, KS. An examination of controlled airspace at Hays, KS revealed a discrepancy in the Hays Regional Airport airport reference point used in the legal description for the Hays, KS Class E airspace designated as a surface area. The airspace examination also revealed a discrepancy in the title of the Hays, KS Class E airspace area extending upward from 700 feet above the surface. This action corrects the discrepancies by modifying the Class E airspace areas at Hays, KS and their legal descriptions. It amends the airport name in the Hays, KS Class E airspace areas and their legal descriptions, incorporates the correct Hays Regional Airport airport reference point in the Class E surface area, amends the title of the Class E airspace area extending upward from 700 feet above the surface and brings the legal descriptions of the Hays, KS Class E airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or

negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14932/Airspace Docket No. 03–ACE–35.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Hays, KS

Hays Regional Airport, KS
(Lat. 38°50′41″ N., long. 99°16′26″ W.)
Hays VORTAC
(Lat. 38°50′52″ N., long. 99°16′36″ W.)

Within a 4.1-mile radius of Hays Regional Airport and within 1.8 miles each side of the Hays VORTAC 005° radial extending from the 4.1-mile radius to 7 miles north of the VORTAC and within 1.8 miles each side of the Hays VORTAC 169° radial extending from the 4.1-mile radius to 6 miles south of the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Hays, KS

Hays Regional Airport, KS
(Lat. 38°50′41″ N., long. 99°16′26″ W.)
Hays VORTAC
(Lat. 38°50′52″ N., long. 99°16′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Hays Regional Airport and within 2.6 miles each side of the Hays VORTAC 005° radial extending from the 6.6-mile radius to 7.9 miles north of the airport and within 2.6 miles each side of the Hays VORTAC 169° radial extending from the 6.6-mile radius to 7.9 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on April 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11033 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14934; Airspace Docket No. 03–ACE–37]

Modification of Class E Airspace; Milford, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Milford, IA. An examination of controlled airspace for Milford, IA revealed discrepancies in the Milford, Fuller Airport, IA airport reference point used in the legal description for the Milford, IA Class E airspace area. This action corrects the discrepancies by modifying the Milford, IA Class E airspace area. It also incorporates the revised Milford, Fuller Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14934/Airspace Docket No. 03–ACE–37, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Milford, IA. An examination of controlled airspace for Milford, IA revealed discrepancies in the Milford, Fuller Airport, IA airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Milford, Fuller Airport, IA airport reference point and brings the legal description of the Milford, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14934/Airspace Docket No. 03–ACE–37.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Milford, IA

Milford, Fuller Airport, IA
(Lat. 43°19′59″ N., long. 95°09′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Fuller Airport, excluding that airspace within the Spencer, IA Class E airspace area.

* * * * *

Issued in Kansas City, MO, on April 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11034 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2003–14972; Special Federal Aviation Regulation No. 98]

RIN 2120–AH83

Construction or Alteration in the Vicinity of the Private Residence of the President of the United States; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; correction.

SUMMARY: This document makes corrections to the docket number for the interim final rule published in the **Federal Register** on April 22, 2003 (68 FR 19730). That interim final rule required that notice be filed with the FAA for the construction or alteration of any object that exceeds 50 feet above ground level and is within the existing

prohibited airspace surrounding the private residence of the President of the United States.

DATES: Effective April 22, 2003.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, 202–267–8783.

Correction

■ In interim final rule FR Doc. 03–9886, published on April 22, 2003 (68 FR 19730), make the following corrections:

■ 1. On page 19730, in the first column, correct ''Docket No. FAA–2003–14973'' to read ''Docket No. FAA–2003–14972;''

■ 2. On page 19730, in the second column, in line 6 of the **ADDRESSES** paragraph, correct ''docket number FAA–2003–14973'' to read ''docket number FAA–2003–14972''

■ 3. On page 19730, in the third column, in line seven of the last paragraph of the ''Comments Invited'' paragraph, correct ''Docket No. FAA–2003–14973'' to read ''Docket No. FAA–2003–14972.''

■ 4. On page 19732, in the third column, in line six of Section 2. of SFAR No. 98, correct ''31°43′45N'' to read ''31°34′45N''.

■ 5. On page 19733, in the first column, in line three of Section 3. of SFAR No. 98, correct ''31°43′45N'' to read ''31°34′45N''.

Issued in Washington, DC on April 29, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–11037 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') revises Table 1 in § 305.9 of the Commission's Appliance Labeling Rule (''Rule'') to incorporate the latest figures for average unit energy costs as published by the Department of Energy (''DOE'') in the **Federal Register** on April 9, 2003. Table 1 sets forth the representative average unit energy costs for five residential energy sources, which the Commission revises periodically on the basis of updated information provided by DOE.

DATES: The amendments published in this notice are effective May 5, 2003. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the Supplementary Information Section, below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; E-mail: *hnewsome@ftc.gov*.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act (''EPCA''), 42 U.S.C. 6201.[1] The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in section 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE.

I. Representative Average Unit Energy Costs

On April 9, 2003, DOE published the most recent figures for representative average unit energy costs (68 FR 17361). These energy cost figures are for manufacturers to use, in accordance with the guidelines that appear below, to calculate the required secondary annual operating cost figures at the bottom of required EnergyGuides for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. The energy cost figures also are for manufacturers of central air conditioners and heat pumps to use, also in accordance with the below guidelines, to calculate annual operating costs for required fact sheets and in approved industry directories listing these products.[2] The Commission is revising Table 1 to reflect these latest cost figures, as set forth below. The current and future obligations of manufacturers with respect to the use of DOE's cost figures are as follows:

A. Labeling of Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, Water Heaters, and Room Air Conditioners[3]

Manufacturers must continue to use the DOE cost figures that were published and in effect the year the ranges of comparability last changed for the applicable covered product. The cost figures currently applicable to each product category are detailed below. Manufactures must continue to use these figures until new ranges of comparability for an applicable product are published by the Commission in the future. For example, if the ranges of comparability for a given product last changed in the year 2001, manufacturers should continue to use the 2001 DOE energy cost figures until the Commission announces otherwise.

1. Refrigerators, Refrigerator-Freezers, and Freezers

Manufacturers of refrigerators, refrigerator-freezers, and freezers must continue to derive the operating cost disclosures on labels by using the 2001 National Average Representative Unit Costs (8.29 cents per kilo Watt-hour for electricity) published by DOE on March 8, 2001 (66 FR 13917), and by the Commission on May 21, 2001 (66 FR 27856), that were in effect when the current 2001 ranges of comparability for these products were published.[4]

[1] 44 FR 66466. Since its promulgation, the Rule has been amended five times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), certain lamp products (59 FR 25176, May 13, 1994), and pool heaters and certain residential water heater types (59 FR 49556, Sept. 28, 1994). Obligations under the Rule concerning fluorescent lamp ballasts, lighting products, plumbing products and pool heaters are not affected by the cost figures in this notice.

[2] The DOE cost figures are not necessary for making data submissions to the Commission. The required energy use information that manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must submit under section 305.8 of the Rule is no longer operating cost; it is now energy consumption (kilowatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil).

[3] Sections 305.11(a)(5)(i)(H)(2) and (3) of the Rule (16 CFR 305.11(a)(5)(i)(H)(2) and (3)) require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operating cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

[4] The current (2001) ranges for refrigerators, refrigerator-freezers, and freezers were published on

Manufacturers must continue to use the foregoing DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

2. Room Air Conditioners

Manufacturers of room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 National Average Representative Unit Costs for electricity (8.67 cents per kilo Watt-hour) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296), and that were in effect when the current (1995) ranges of comparability for these products were published.[5] Manufacturers of room air conditioners must continue to use the 1995 DOE cost figures until the Commission publishes new ranges of comparability and state that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

3. Storage-Type Water Heaters

Manufacturers of storage-type water heaters must continue to usse the 1994 DOE cost figures (8.41 cents per kiloWatt-hour for electricity, 60.4 cents per therm for natural gas, $1.05 per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane) in determining the operating cost disclosures on the labels on their products. This is because the 1994 DOE cost figures were in effect when the 1994 ranges of comparability for storage-type water heaters were published, and those 1994 ranges are still in effect for those products.[6] Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for energy then in effect.

4. Heat Pump Water Heaters

Manufacturers of heat pump water heaters must continue to derive the operating cost disclosures on labels by using the 2002 National Average Representative Unit Costs for electricity (8.28 cents per kiloWatt-hour) that were published by DOE on April 24, 2002 (67 FR 20104), and by the Commission on June 7, 2002 (67 FR 39269), and that were in effect when the current (2002) ranges of comparability for these products were published.[7] Manufacturers of heat pump water heaters must continue to use the 2002 DOE cost figures until the Commission publishes new ranges of comparability and state that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

5. Gas-Fired Instantaneous Water Heaters

Manufacturers of gas-fired instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1999 National Average Representative Unit Costs for natural gas (68.8 cents per therm) and propane (77 cents per therm) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783), and that were in effect when the 1999 ranges of comparability for these products were published.[8] Manufacturers must continue to use the 1999 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for natural gas and propane then in effect.

6. Dishwashers

Manufacturers of dishwashers must continue to base the required secondary operating cost disclosures on labels on the 2002 National Average Representative Unit Costs for electricity (8.28 cents per kiloWatt-hour) and natural gas (65.6 cents per therm) that were published by DOE on April 24, 2002 (67 FR 20104), and by the Commission on June 7, 2002 (67 FR 39269), and that were in effect when the 2002 ranges of comparability for these products were published.[9] Manufacturers of dishwashers must continue to use the 2002 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for electricity and natural gas then in effect.

7. Clothes Washers

Manufacturers of clothes washers must continue to derive the operating cost disclosures on labels by using the 2000 National Average Representative Unit Costs for electricity (8.03 cents per kiloWatt-hour) and natural gas (68.8 cents per therm) that were published by DOE on February 7, 2000 (65 FR 5860), and by the Commission on April 17, 2000 (65 FR 20352), and that were in effect when the current (2000) ranges of comparability for these products were published.[10] Manufacturers of clothes washers must continue to use the 2000 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for electricity and natural gas then in effect.

B. Operating Cost Information for Central Air Conditioners and Heat Pumps Disclosed on Fact Sheets and in Industry Directories

In the 2003 notice announcing whether there will be new ranges of comparability for central air conditioners and heat pumps, the Commission also will announce that operating cost disclosures for these products on fact sheets and in industry directories must be based on the 2003 DOE cost figure for electricity beginning on the effective date of that notice.

C. Operating Cost Representations for Products Covered by EPCA But Not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 2003 DOE energy costs in all operating cost

November 19, 2001 (66 FR 57867). On October 24, 2002 (67 FR 65310), the Commission announced that the 2001 ranges for these products would remain in effect.

[5] The current (1995) ranges for room air conditioners were published on November 13, 1995 (60 FR 56945). On September 16, 1996 (61 FR 46820), August 25, 1997 (62 FR 44890), August 28, 1998 (63 FR 45941), December 20, 1999 (64 FR 71019), September 1, 2000 (65 FR 53163), August 2, 2001 (66 FR 40110), and June 24, 2002 (67 FR 42478), the Commission announced that the 1995 ranges for room air conditioners would remain in effect.

[6] The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On August 21, 1995 (60 FR 43367), September 16, 1996 (61 FR 48620), August 25, 1997 (62 FR 44890), August 28, 1998 (63 FR 45941), December 20, 1999 (64 FR 71019), September 1, 2000 (65 FR 53163), August 2, 2001 (66 FR 40110), and June 24, 2002 (67 FR 42478), the Commission announced that the 1994 ranges for storage-type water heaters would remain in effect.

[7] The current (2002) ranges of comparability for heat pump water heaters were published on June 24, 2002 (67 FR 42478).

[8] The current ranges for gas-fired instantaneous water heaters were published on December 20, 1999 (64 FR 71019). On September 1, 2000 (65 FR 53165), August 2, 2001 (66 FR 40110), and June 24, 2002 (67 FR 42478), the Commission announced that the 1999 ranges for gas-fired instantaneous water heaters would remain in effect.

[9] The current ranges for dishwashers were published on July 19, 2002 (67 FR 47443).

[10] The current (2000) ranges of comparability for clothes washers were published on May 11, 2000 (65 FR 30351). On April 16, 2001 (66 FR 19389) and on April 12, 2002 (67 FR 17936), the Commission announced that the 2000 ranges for clothes washers would remain in effect.

representations beginning August 4, 2003.

II. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the Rule's labeling requirements. These technical amendments merely provide a routine change to the cost information in the Rule. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the cost information in the Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[11] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084–0068. OMB has extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

■ Accordingly, 16 CFR Part 305 is amended as follows:

■ 1. The authority citation for Part 305 continues to read:

Authority: 42 U.S.C. 6294.

■ 2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COST OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2003)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.41¢/kWh [2] [3]	$0.0841/kWh	$24.65
Natural Gas	81.6¢/therm [4] or $8.37/MCF [5] ndash;[6]	$0.00000816/Btu	$8.16
No. 2 heating oil	$1.22/gallon [7]	$0.00000880/Btu	$8.80
Propane	$1.21/gallon [8]	$0.00001325/Btu	$13.25
Kerosene	$1.43/gallon [9]	$0.00001059/Btu	$10.59

[1] Btu stands for British thermal unit.
[2] kWh stands for kiloWatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–11008 Filed 5–2–03; 8:45 am]

BILLING CODE 6750–01–M

[11] 44 U.S.C. 3501–3520.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9056]

RIN 1545–BA82

Earnings Calculation for Returned or Recharacterized IRA Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide a new method to be used for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) of the Internal Revenue Code (Code) or recharacterized pursuant to section 408A(d)(6). These regulations will affect IRA owners and IRA trustees, custodians and issuers.

DATES: *Effective Date:* These final regulations are effective on May 5, 2003.

Applicability Date: These final regulations are applicable for calculating income allocable to IRA contributions made on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at 622–6090.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under Code sections 408 and 408A. These regulations provide a new method for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) or recharacterized pursuant to section 408A(d)(6).

Section 408(d)(4) provides that an IRA contribution will not be included in the IRA owner's gross income when distributed as a returned contribution if: (1) It is received by the IRA owner on or before the day prescribed by law (including extensions) for filing the owner's Federal income tax return for the year of the contribution; (2) no deduction is allowed with respect to the contribution; and (3) the distribution is accompanied by the amount of net income attributable to the contribution.

Section 408A(d)(6) provides that a contribution made to one type of IRA may be recharacterized as having been made to another type of IRA if: (1) The recharacterization transfer occurs on or before the date prescribed by law (including extensions) for filing the IRA owner's Federal income tax return for the year for which the contribution was made; (2) no deduction is allowed with respect to the contribution to the transferor IRA; and (3) the transfer is accompanied by any net income allocable to the contribution.

Notice 2000–39 (2000–2 C.B. 132), provided a new method for calculating net income that generally based the calculation of the amount of net income attributable to a contribution on the actual earnings and losses of the IRA during the time it held the contribution, and provided that under the new method, net income could be negative. Notice 2000–39 provided that until further guidance is issued, either the old method (*i.e.*, the method specified in § 1.408–4(c)(2)(ii)) or the new method may be used to calculate net income.

Proposed regulations under sections 408 and 408A were published in the **Federal Register** on July 23, 2002 (REG–124256–02, 67 FR 48067). These proposed regulations incorporated, with certain modifications, the new method provided in Notice 2000–39. The public reaction to Notice 2000–39 was generally favorable and few comments were received on the proposed regulations. Consequently, these final regulations adopt the rules in the proposed regulations without modification.

Explanation of Provisions

These final regulations retain, without change, the methods provided in the proposed regulations. Thus, under these final regulations, for purposes of returned contributions under section 408(d)(4) and recharacterized contributions under section 408A(d)(6), the net income attributable to a contribution is determined by allocating to the contribution a *pro rata* portion of the net income on the assets in the IRA (whether positive or negative) during the period the IRA held the contribution. This new method is represented by the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance.}}$$

Under the final regulations, generally, the adjusted opening balance means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers made to the IRA during the computation period. A special rule is provided for an IRA asset that is not normally valued on a daily basis. In this case, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. One commentator suggested that the application of this special rule be extended to all IRA assets as an alternate fair market value determination so that the value of an IRA at the beginning of the computation period could be the most recent statement value just prior to the contribution, rather than the actual value on the exact date of the contribution.

The final regulations do not extend the special valuation rule to all IRA assets because the IRS and Treasury believe that if an IRA asset is normally valued on a daily basis, these values must be used so that the calculation of the amount of net income attributable to a contribution is based on the actual earnings and losses of the IRA during the time it held the contribution. The alternate rule suggested by the commentator would increase the chances of producing anomalous results because account activity in the part of the year that precedes the date the contribution was made would be taken into account in the calculation of the net income attributable to the contribution.

One commentator suggested that where both regular Roth IRA contributions and conversion contributions have been made to the same Roth IRA, the net income calculation attributable to a recharacterization of a conversion contribution may require that some of the regular Roth IRA contributions be recharacterized to the traditional IRA. The commentator recommended that if a conversion contribution is being recharacterized, and the Roth IRA contains both regular contributions and conversion contributions, the final rules should permit the principal amount of any regular Roth IRA contributions in that same Roth IRA to remain in the Roth IRA.

The final regulations retain the rule, without modification, that net income calculations and allocations must be based on the overall value of an IRA and the dollar amounts contributed, distributed or recharacterized to or from the IRA. Even in a recharacterization of an amount converted to a Roth IRA where the Roth IRA contains both regular contributions and conversion contributions, the final regulations do not permit net income, including any losses, to be allocated other than *pro rata*. Thus, the principal amount of regular Roth IRA contributions cannot be protected against adjustment for their *pro rata* share of net income, including any net losses, during the computation period. Once contributions are commingled in an account, those dollars are no longer associated with particular assets or contributions. In the absence of maintaining separate accounts, tying particular assets to a particular contribution would create administrative problems for taxpayers, IRA providers and the IRS.

Effective Date

These final regulations are applicable for calculating income allocable to IRA contributions made on or after January 1, 2004. For purposes of determining net income applicable to IRA contributions made during 2002 and 2003, taxpayers may continue to apply the rules set forth in Notice 2000–39 or may rely on the proposed regulations.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.408–11 and A–2(c) of § 1.408A–5 impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

§ 1.408–4 also issued under 26 U.S.C. 408.

§ 1.408–11 also issued under 26 U.S.C. 408. * * *

■ **Par. 2.** In § 1.408–4, paragraph (c)(1) is amended by adding two sentences before the current first sentence to read as follows:

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

* * * * *

(c) * * * (1) * * * The rules in this paragraph (c) apply for purposes of determining net income attributable to IRA contributions made before January 1, 2004, and returned pursuant to section 408(d)(4). The rules in § 1.408–11 apply for purposes of determining net income attributable to IRA contributions made on or after January 1, 2004, and returned pursuant to section 408(d)(4). * * *

* * * * *

■ **Par. 3.** Section 1.408–11 is added to read as follows:

§ 1.408–11 Net income calculation for returned or recharacterized IRA contributions.

(a) *Net income calculation for returned IRA contributions*—(1) *General rule.* For purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution made to an IRA is determined by allocating to the contribution a *pro rata* portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance.}}$$

(2) *Special rule.* If an IRA is established with a contribution and no other contributions, distributions or transfers are made to or from that IRA, then the subsequent distribution of the entire account balance of the IRA pursuant to section 408(d)(4) will satisfy the requirement of that Internal Revenue Code section that the return of a contribution be accompanied by the amount of net income attributable to the contribution.

(b) *Definitions.* For purposes of this section the following definitions apply:

(1) *Adjusted opening balance.* The term *adjusted opening balance* means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is distributed as a returned contribution pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made to the IRA during the computation period.

(2) *Adjusted closing balance.* The term *adjusted closing balance* means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(3) *Computation period.* The term *computation period* means the period beginning immediately prior to the time that the contribution being returned was made to the IRA and ending immediately prior to the removal of the contribution. If more than one contribution was made as a regular contribution and is being returned from the IRA, the computation period begins immediately prior to the time the first contribution being returned was contributed.

(4) *Regular contribution.* The term *regular contribution* means an IRA contribution made by the IRA owner that is neither a trustee-to-trustee transfer from another IRA nor a rollover from another IRA or retirement plan.

(c) *Additional rules.* (1) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this section, notwithstanding A–3 of § 1.408A–5, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(2) In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

(3) In the case of an individual who owns multiple IRAs, the net income calculation is performed only on the IRA containing the contribution being returned, and that IRA is the IRA that must distribute the contribution.

(d) *Examples.* The following examples illustrate the net income calculation under section 408(d)(4) and this section:

Example 1. (i) On May 1, 2004, when her IRA is worth $4,800, Taxpayer A makes a $1,600 regular contribution to her IRA. Taxpayer A requests that $400 of the May 1, 2004, contribution be returned to her

pursuant to section 408(d)(4). Pursuant to this request, on February 1, 2005, when the IRA is worth $7,600, the IRA trustee distributes to Taxpayer A the $400 plus attributable net income. During this time, no other contributions have been made to the IRA and no distributions have been made.

(ii) The adjusted opening balance is $6,400 [$4,800 + $1,600] and the adjusted closing balance is $7,600. Thus, the net income attributable to the $400 May 1, 2004, contribution is $75 [$400 × ($7,600 − $6,400) ÷ $6,400]. Therefore, the total to be distributed on February 1, 2005, pursuant to § 408(d)(4) is $475.

Example 2. (i) Beginning in January 2004, Taxpayer B contributes $300 on the 15th of each month to an IRA for 2004, resulting in an excess regular contribution of $600 for that year. Taxpayer B requests that the $600 excess regular contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on March 1, 2005, when the IRA is worth $16,000, the IRA trustee distributes to Taxpayer B the $600 plus attributable net income. The excess regular contributions to be returned are deemed to be the last two made in 2004: the $300 December 15 contribution and the $300 November 15 contribution. On November 15 the IRA was worth $11,000 immediately prior to the contribution. No distributions or transfers have been made from the IRA and no contributions or transfers, other than the monthly contributions (including $300 in January and February 2005), have been made.

(ii) As of the beginning of the computation period (November 15), the adjusted opening balance is $12,200 [$11,000 + $300 + $300 + $300 + $300] and the adjusted closing balance is $16,000. Thus, the net income attributable to the excess regular contributions is $187 [$600 × ($16,000 − $12,200) ÷ $12,200]. Therefore, the total to be distributed as returned contributions on March 1, 2005, to correct the excess regular contribution is $787 [$600 + $187].

■ **Par. 4.** In § 1.408A–5, A–2(c) is revised to read as follows:

§ 1.408A–5 Recharacterized contributions.

* * * * *

A–2. * * *

(c)(1) If paragraph (b) of this A–2 does not apply, then, for purposes of determining net income attributable to IRA contributions, the net income attributable to the amount of a contribution is determined by allocating to the contribution a *pro rata* portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance.}}$$

(2) For purposes of this paragraph (c), the following definitions apply:

(i) The term *adjusted opening balance* means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is being recharacterized pursuant to section 408A(d)(6) and any other recharacterizations) made to the IRA during the computation period.

(ii) The term *adjusted closing balance* means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including contributions returned pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(iii) The term *computation period* means the period beginning immediately prior to the time the particular contribution being recharacterized is made to the IRA and ending immediately prior to the recharacterizing transfer of the contribution. If a series of regular contributions was made to the IRA, and consecutive contributions in that series are being recharacterized, the computation period begins immediately prior to the time the first of the regular contributions being recharacterized was made.

(3) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this paragraph (c), notwithstanding A–3 of this section, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(4) In the case of an individual with multiple IRAs, the net income calculation is performed only on the IRA containing the particular contribution to be recharacterized, and that IRA is the IRA from which the recharacterizing transfer must be made.

(5) In the case of multiple contributions made to an IRA for a particular year that are eligible for recharacterization, the IRA owner can choose (by date and by dollar amount, not by specific assets acquired with those dollars) which contribution, or portion thereof, is to be recharacterized.

(6) The following examples illustrate the net income calculation under section 408A(d)(6) and this paragraph:

Example 1. (i) On March 1, 2004, when her Roth IRA is worth $80,000, Taxpayer A makes a $160,000 conversion contribution to the Roth IRA. Subsequently, Taxpayer A discovers that she was ineligible to make a Roth conversion contribution in 2004 and so she requests that the $160,000 be recharacterized to a traditional IRA pursuant to section 408A(d)(6). Pursuant to this request, on March 1, 2005, when the IRA is worth $225,000, the Roth IRA trustee transfers to a traditional IRA the $160,000 plus allocable net income. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) The adjusted opening balance is $240,000 [$80,000 + $160,000] and the adjusted closing balance is $225,000. Thus the net income allocable to the $160,000 is − $10,000 [$160,000 × ($225,000 − $240,000) ÷ $240,000]. Therefore, in order to recharacterize the March 1, 2004, $160,000 conversion contribution on March 1, 2005, the Roth IRA trustee must transfer from Taxpayer A's Roth IRA to her traditional IRA $150,000 [$160,000 − $10,000].

Example 2. (i) On April 1, 2004, when her traditional IRA is worth $100,000, Taxpayer B converts the entire amount, consisting of 100 shares of stock in ABC Corp. and 100 shares of stock in XYZ Corp., by transferring the shares to a Roth IRA. At the time of the conversion, the 100 shares of stock in ABC Corp. are worth $50,000 and the 100 shares of stock in XYZ Corp. are also worth $50,000. Taxpayer B decides that she would like to recharacterize the ABC Corp. shares back to a traditional IRA. However, B may choose only by dollar amount the contribution or portion thereof that is to be recharacterized. On the date of transfer, November 1, 2004, the 100 shares of stock in ABC Corp. are worth $40,000 and the 100 shares of stock in XYZ Corp. are worth $70,000. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) If B requests that $50,000 (which was the value of the ABC Corp. shares at the time of conversion) be recharacterized, the net income allocable to the $50,000 is $5,000 [$50,000 × ($110,000 − $100,000) ÷ $100,000]. Therefore, in order to recharacterize $50,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of $55,000 [$50,000 + $5,000].

(iii) If, on the other hand, B requests that $40,000 (which was the value of the ABC Corp. shares on November 1) be recharacterized, the net income allocable to the $40,000 is $4,000 [$40,000 × ($110,000 − $100,000) ÷ $100,000]. Therefore, in order to recharacterize $40,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of $44,000 [$40,000 + $4,000].

(iv) Regardless of the amount of the contribution recharacterized, the determination of that amount (or of the net income allocable thereto) is not affected by whether the recharacterization is accomplished by the transfer of shares of ABC Corp. or of shares of XYZ Corp.

(7) This paragraph (c) applies for purposes of determining net income attributable to IRA contributions, made on or after January 1, 2004. For purposes of determining net income attributable to IRA contributions made before January 1, 2004, *see* paragraph (c) of this A–2 of § 1.408A–5 (as it appeared in the April 1, 2003, edition of 26 CFR part 1).

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: April 25, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–11046 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–016]

RIN 1625–AA09

Drawbridge Operation Regulations; Harlem River, Newtown Creek, NY.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx; the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx; and the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens. This temporary final rule authorizes the bridge owner to close the above bridges on May 4, 2003, at different times of short duration to facilitate the running of the Five Borough Bike Tour. Vessels that can pass under the bridges without a bridge opening may do so at any time.

DATES: This rule is effective on May 4, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–03–016) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The Coast Guard believes this action is reasonable because the requested closures are of short duration on a Sunday when the bridges normally have no requests to open. The Harlem River and the Newtown Creek are navigated predominantly by commercial vessels that pass under the bridges without bridge openings. The few commercial vessels that do require openings are work barges that do not operate on Sundays. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to close the bridge in order to provide for public safety and the safety of the race participants.

Background and Purpose

Third Avenue Bridge

The Third Avenue Bridge, at mile 1.9, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing operating regulations are listed at § 117.789 (c).

Madison Avenue Bridge

The Madison Avenue Bridge, at mile 2.3, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position. The existing operating regulations listed at § 117.789(c).

Pulaski Bridge

The Pulaski Bridge, at mile 0.6, across the Newtown Creek between Brooklyn and Queens, has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water in the closed position. The existing operating regulations listed at § 117.801(g).

The owner of the bridges, New York City Department of Transportation requested a change to the operating regulations for the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to facilitate the running of the Five Borough Bike Tour on Sunday, May 4, 2003.

Under this temporary final rule the Third Avenue Bridge, at mile 1.9, and the Madison Avenue Bridge, at mile 2.3, may remain in the closed position from 8 a.m. to 12 p.m. on Sunday, May 4, 2003. The Pulaski Bridge, at mile 0.6, across Newtown Creek, may remain in the closed position from 9:30 a.m. to 11:30 a.m. on Sunday, May 4, 2003. Vessels that can pass under the bridges without a bridge opening may do so at all times.

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 conclusion is based on the fact that the requested closures are of short duration on a Sunday morning when the bridges normally do not receive any requests to open.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 less than 50,000.

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

This conclusion is based on the fact that requested closures are of short duration on a Sunday morning when the

bridges normally do not receive any requests to open.

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 State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 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 the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.789, from 8 a.m. through 12 p.m. on May 4, 2003, paragraph (c) is temporarily suspended and a new temporary paragraph (g) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(g) The draws of the bridges at 103 Street, mile 0.0, Willis Avenue, mile 1.5, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal from 10 a.m. to 5 p.m. if at least four-hours notice is given to the New York City Highway Radio (Hotline) Room. The Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for vessel traffic from 8 a.m. to 12 p.m. on Sunday, May 4, 2003.

■ 3. In § 117.801, from 9:30 a.m. through 11:30 a.m. on May 4, 2003, paragraph (g) is suspended and a new paragraph (h) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(h) The draw of the of the Greenpoint Avenue Bridge, mile 1.3, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation Radio (Hotline) Room. The Pulaski Bridge, mile 0.6, need not open for vessel traffic from 9:30 a.m. to 11:30 a.m. on May 4, 2003.

Dated: April 25, 2003.

Vivien S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–11035 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–02–009]

RIN 1625–AA00 [Formerly RIN 2115–AA97]

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing security zones within the Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport, Texas. These zones are needed to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry of persons and vessels into these zones is prohibited except as authorized by this rule or by the Captain of the Port Houston-Galveston.

DATES: This rule is effective April 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 Houston-Galveston–02–

009] and are available for inspection or copying at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 11, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zones; Captain of the Port Houston and Galveston Zone'' [COTP Houston-Galveston–02–009] (67 FR 39919). The comment period for the NPRM expired on August 12, 2002. We received only two comments on this rule and both comments requested information on how to comment on the proposed rule. On December 10, 2002, as a result of those comments and to reflect changes in the size of the security zones proposed, we published a supplemental notice of proposed rulemaking (SNPRM) entitled ''Security Zones; Captain of the Port Houston-Galveston Zone'' [COTP Houston-Galveston–02–009] (67 FR 75831). Prior to the SNPRM being published we received one additional comment. That comment is treated as if it was submitted in response to the SNPRM. 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**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The temporary final rule published in the **Federal Register** on May 1, 2002 (67 FR 21578) as amended on June 11, 2002 (67 FR 39848) and extended on November 5, 2002 (67 FR 67301) expires on April 15, 2003. This rule replaces the original temporary final rule. Any delay in making this rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (67 FR 58317 (Sep. 13, 2002) (continuing the emergency declared with respect to terrorist attacks); 67 FR 59447 (Sep. 20, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191, *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in its international relations and such disturbances continue to endanger such relations)).

In response to those terrorist acts, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. The Captain of Port Houston-Galveston established temporary security zones around highly industrial areas within the Captain of the Port Houston-Galveston Zone. These zones were published on June 11, 2002 [COTP Houston-Galveston–02–011](67 FR 39851) and November 5, 2002 [COTP Houston-Galveston–02–018](67 FR 67301).

On June 11, 2002, we published an NPRM entitled ''Security Zones; Captain of the Port Houston-Galveston Zone'' [COTP Houston-Galveston–02–009] (67 FR 39919). The comment period for the NPRM expired on August 12, 2002. We received only two comments on this rule and both comments requested information on how to comment on the proposed rule. On 10 December, 2002, as a result of those comments and to reflect changes in the size of the security zones proposed, we published a supplemental notice of proposed rulemaking (SNPRM) entitled ''Security Zones; Captain of the Port Houston-Galveston Zone'' [COTP Houston-Galveston–02–009] (67 FR 75831).

Discussion of Comments and Changes

We received a total of three comments on the proposed rule. Two comments requested information on how to comment on the proposed rule. No follow-up comments were received for either. The third comment was in support of the proposed rule. No comment suggested that any changes should be made to the proposed rule. Therefore, we have made no 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).

The impacts on routine navigation are expected to be minimal. Due to the highly industrialized nature of the areas in the vicinity of the zones, they are of limited interest to recreational boaters. Vessels engaged in commerce, assisting facilities located within a zone, or having the express permission of the Captain of the Port Houston-Galveston are authorized entry into a zone under this rule.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. These security zones will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the zones. Other vessels may seek permission for entry into the zones from the Captain of the Port Houston-Galveston.

If you are a small business entity and are significantly affected by the regulation please contact LTJG George Tobey at U.S. Coast Guard Marine Safety Office Houston-Galveston, at (713) 671–5100.

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 this rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.l, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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 § 165.814 to read as follows:

§ 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location.* The following areas are designated as security zones:

(1) Houston, Texas. The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR–24445) and Houston Ship Channel Light 133 (LLNR–24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) Morgan's Point, Texas. The Barbours Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light ''Barbours Cut'' 29°41′12″ N, 94°59′12″ W (LLNR–23525), and Houston Ship Channel Light 91, 29°41′00″ N, 94°59′00″ W (LLNR–23375) (NAD 1983).

(3) Bayport, TX. The Port of Bayport, Bayport Ship Channel and Bayport Turning Basin containing all waters south of latitude 28°36′45″ N and west of Bayport Ship Channel Light 9 (LLNR–23295) (NAD 1983).

(4) Texas City, Texas. The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area south and west of a line drawn from Texas City Channel Light 19 (LLNR 24810) through Cut B Inner Range Front Light (LLNR 24765) and terminating on land in position 29°23′16″ N, 94°53′15″ W (NAD 1983).

(5) Freeport, Texas. (i) The Dow Barge Canal containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at latitude 28°56′48″ N, 95°18′20″ W, and the western point at 28°56′40″ N, 95°18′33″ W (NAD 1983).

(ii) The Brazos Harbor containing all waters west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W (NAD 1983) at its junction with the Old Brazos River Cut.

(b) *Effective dates.* This section is effective on April 15, 2003.

(c) *Regulations.* (1) Entry of into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or designated representative.

(3) To request permission as required by these regulations contact ''Houston Traffic'' via VHF Channels 11/12 or by phone at (713) 671–5103.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: March 28, 2003.

Kevin S. Cook,

Captain, U.S. Coast Guard, Captain of the Port, Houston-Galveston.

[FR Doc. 03–10944 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Mobile–03–009]

RIN 1625–AA00

Security Zone; Bayou Casotte, Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing all waters of Bayou Casotte east of a line drawn from position 30°19′09″N, 88°30′63″W to position 30° 20′42″N, 88°30′51″W at the Chevron Pascagoula Refinery. This security zone is necessary to protect Chevron Pascagoula refinery, persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into this security zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective from 8 a.m. on March 22, 2003, until 5 p.m. on September 22, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (COTP Mobile-03–009) and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441–5771.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

National security and intelligence officials warn that future terrorist attacks against United States interests are likely. Current advisories of terrorist threats and the nature of the material handled at Chevron Pascagoula refinery make this rulemaking necessary for the protection of national security interests. Any delay in making this regulation effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

The Coast Guard will, during the effective period of this temporary rule, complete notice and comment rulemaking for a proposed permanent regulation.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (67 FR 58317 (Sep. 13, 2002) (continuing the emergency declared with respect to terrorist attacks); 67 FR 59447 (Sep. 20, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations). In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. The Captain of the Port Mobile is establishing a temporary security zone encompassing all waters of Bayou Casotte east of a line drawn from position 30° 19′09″N, 88° 30′63″W to position 30° 20′42″N 88° 30′51″W at the Chevron Pascagoula Refinery. These coordinates are based upon (NAD 83). This security zone is necessary to protect the Chevron Pascagoula refinery, persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into this security zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

Regulatory Evaluation

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

If you are a small business entity and are significantly affected by this regulation please contact LT Carolyn Beatty, Operations Department, Marine Safety Office, Mobile, AL, at (251) 441–5771.

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 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 Executive Order 13132 and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available 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. A new temporary § 165.T08–020 is added to read as follows:

§ 165.T08–020 Security Zone; Chevron Pascagoula Refinery, Pascagoula, Mississippi.

(a) *Location.* The following area is a security zone: all waters of Bayou Casotte east of a line drawn from position 30°19′09″N, 88°30′63″W to position 30°20′42″N, 88°30′51″W at the Chevron Pascagoula Refinery. These coordinates are based upon [NAD 83].

(b) *Effective period.* This section is effective from 8 a.m. on March 22, 2003 until 5 p.m. on September 22, 2003.

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

(2) Persons or vessels desiring to transit the area of the security zone may contact the Captain of the Port Mobile at telephone number (251) 441–5121 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 Mobile or his designated representative.

Dated: March 22, 2003.

Steven D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 03–11036 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–017]

RIN 1625–AA00

Safety Zone; Oceanside, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the navigable waters of the Pacific Ocean in Oceanside, California, for the Sixth Annual Oceanside Offshore Grand Prix Powerboat Race.

This temporary safety zone is necessary to provide for the safety of the participants and spectators of the race, to protect the participating vessels, and to protect other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 11:30 a.m. (P.d.t.) on May 4, 2003, until 3:30 p.m. (P.d.t.) on May 4, 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 San Diego 03–017) and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days prior to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of Oceanside, CA. in support of the Seventh Annual Oceanside Offshore Grand Prix. The Oceanside Offshore Grand Prix is an annual event that involves powerboats designed for open ocean racing. These vessels will be racing at high speeds along a marked course off the shore of Oceanside, California. This temporary safety zone is necessary to provide for the safety of the participants and spectators of this event, the participating vessels, and to protect other users of this waterway. This temporary safety zone will consist of a small portion of the navigable waters of Pacific Ocean off of Oceanside, CA. The event starts at 11:30 a.m. (P.d.t.) on May 4, 2003, and ends at 3:30 p.m. (P.d.t.) on May 4, 2003.

Discussion of Rule

This safety zone is defined as an area of the navigable waters of Oceanside, CA, more specifically described as follows: an area encompassed by the following points beginning at the point latitude 33°09′87″ N, longitude 117°22′81″ W, thence northeasterly to latitude 33°10′14″ N, longitude 117°22′33″ W, thence northwesterly to latitude 33°11′49″ N, longitude 117°23′36″ W, thence northerly to latitude 32°11′64″ N, longitude 117°23′36″ W, thence southeast to the point of beginning.

This temporary safety zone is necessary to provide for the safety of the participants, spectators, and sponsor vessels of the 6th Annual Oceanside Grand Prix and to protect other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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).

Due to the temporary safety zone's short duration of three hours for just one day, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 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; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add a new § 165.T11–035 to read as follows:

§ 165.T11–035 Safety Zone: Oceanside, CA.

(a) *Location.* The area described as follows is a safety zone: an area encompassed by the following points beginning at the point latitude 33°09′87″ N, longitude 117°22′81″ , thence northeasterly to latitude 32°10′14″ N, longitude 117°22′33″ W, thence northwesterly to latitude 33°11′49″ N, longitude 117°23′36″ W, thence northerly to latitude 32°11′64″ N, longitude 117°23′36″ W, thence southeast to the point of beginning.

(b) *Effective dates.* This safety zone will be effective at 11:30 a.m. (PDT) May 4, 2003 through 3:30 p.m. (PDT) May 4, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

Dated: April 23, 2003.

Stephen P. Metruck,

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

[FR Doc. 03–11168 Filed 5–1–03; 1:51 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–60–1–7562; FRL–7492–9]

Approval and Promulgation of Implementation Plans; Louisiana; Rescission of the Section 182(f) and 182(b)(1) Exemptions to the Nitrogen Oxides Control Requirements for the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are approving revisions to the Louisiana State Implementation Plan (SIP). In particular, we are finalizing our proposal to rescind the section 182(f) and 182(b)(1) nitrogen oxides (NO_X) exemptions for the Baton Rouge (BR) ozone nonattainment area, which proposal was published on May 7, 2002 (67 FR 30638). We are rescinding the NO_X exemptions based on revised photochemical grid modeling recently conducted for the BR area SIP which indicates that control of NO_X emissions will help the area attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State of Louisiana requested that EPA rescind the NO_X exemption based on this new modeling. Upon rescission of the NO_X exemptions, the State will need to implement NO_X controls to meet the Clean Air Act's (the Act) requirements for Reasonably Available Control Technology (RACT), Nonattainment New Source Review (NNSR), vehicle Inspection/Maintenance (I/M), and general and transportation conformity.

The EPA is finalizing the proposal to rescind the NO_X exemptions for the BR ozone nonattainment area as meeting the requirements of the Act.

DATES: This rule will be effective on June 4, 2003.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810.

Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–6691, and *Shar.Alan@epa.gov.*

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Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Actions Are We Taking in This Document?

On May 7, 2002 we proposed to rescind the section 182(f) and 182(b)(1) NO_X exemptions for the BR ozone nonattainment area (67 FR 30638). The BR area consists of the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO_X emissions will help the area attain the NAAQS for ozone. The State of Louisiana requested that EPA rescind the NO_X exemption based on this new air modeling. In this action we are rescinding the section 182(f) and 182(b)(1) NO_X exemptions based on the State's demonstration that control of NO_X emissions will contribute to the attainment of the ozone NAAQS in the BR area. Since the reason for the exemptions (per section 182(f) and 182(b)(1)) was that control of NO_X exemptions would not contribute to attainment, it follows that the exemptions must be rescinded. Our responses to the written comments received on our May 7, 2002, proposal are in section 4 of this document.

On July 17, 2002 (67 FR 46970) we notified the public that the NO_X emissions budgets contained in the BR area's attainment demonstration SIP are adequate for transportation conformity purposes. These budgets are to be used for future conformity determinations in the BR area, and are effective as of August 1, 2002.

On September 26, 2002 (67 FR 60594) we approved Louisiana's I/M program for the BR ozone nonattainment area. *See* Louisiana Administrative Code (LAC), Title 33, Chapter 14 (LAC 33:III, Chapter 14). Louisiana's I/M program is now in effect for the BR area.

On September 27, 2002 (67 FR 60877) we approved Louisiana's NO_X RACT for the BR ozone nonattainment area. *See* LAC 33:III, Chapter 22. The NO_X RACT rules are now in effect for the BR area.

On September 27, 2002 (67 FR 60871) we approved Louisiana's emissions reduction credits banking program for the BR area. *See* LAC 33:III, Chapter 6. These rules are now in effect for the BR area.

On September 30, 2002 (67 FR 61260) we approved Louisiana's NNSR procedures for the BR area. *See* LAC 33:III, Chapter 5. These rules are now in effect for the BR area.

On October 2, 2002 (67 FR 61786) we approved Louisiana's attainment demonstration plan and SIP for 1-hour ozone standard within the BR area. This attainment demonstration plan and SIP are now in effect.

As stated in section V of our proposal (67 FR 30639) the section 182(f) NO_X waiver exempted Federal projects from general conformity determinations with respect to NO_X. When the exemption is rescinded, Federal agencies making future general conformity determinations for Federal projects in the BR area will be subject to the NO_X requirements outlined in the State's general conformity rules. The State will not need to revise its general conformity rules if the section 182(f) NO_X waiver is rescinded. *See* LAC 33:III, Chapter 14, Subchapter A, and 40 CFR part 51, subpart W for more information. Existing federal projects will not be affected by the rescission of the sections 182(f) and 182(b)(1) NO_X exemptions and will continue to be valid to the same extent as generally allowed under the rules; however, new federal projects will have to observe the NO_X requirements outlined in the State's general conformity rules.

Pursuant to the above-listed rulemaking actions concerning Louisiana's SIP and this final action, the State will need to implement the Act's NO_X requirements for general conformity, transportation conformity, vehicle I/M, RACT, banking, and NNSR purposes.

2. When Did the Public Comment Period for Our Proposal Expire?

The public comment period for our proposal (67 FR 30638) expired on June 7, 2002.

3. Who Submitted Comments to Us?

We received written comments on our May 2, 2002, proposal (67 FR 30638) from Parish of Ascension (PA), Parish of West Baton Rouge (PWBR), Parish of Iberville (PI), Parish of Livingston (PL), Parish of East Baton Rouge and City of Baton Rouge (PEB), Mc Daniel and Associates (MDA) on behalf of the Baton Rouge Ozone Task Force, and the Tulane Environmental Law Clinic (TELC) on behalf of the Louisiana Environmental Action Network (LEAN).

4. How Do We Respond to the Submitted Written Comments?

Our responses to the written comments concerning the May 7, 2002 (67 FR 30638) proposal are as follows:

Comment #1: The PA, PWBR, PI, PL, PEB, and MDA all commented favorably and stated that they support our proposed rescission of the section 182(f) and 182(b)(1) NO_X exemptions.

Response to comment #1: We appreciate the commenters' support concerning our proposed action and have considered these comments in our final determination.

Comment #2: LEAN expressed conditional support for the rescission of the section 182(f) and 182(b)(1) NO_X exemptions in our proposal.

Response to comment #2: We appreciate the commenters' support and will respond to the commenters' concerns in the following responses to comments.

Comment #3: LEAN commented that the rescission should not be used to increase emissions of Volatile Organic Compounds (VOCs) above legally allowable levels.

Response to Comment #3: The EPA agrees that the rescission of the NO_X exemptions should not be used to increase VOC emissions above legally allowable levels. We addressed similar concerns in our approval of the

Louisiana attainment demonstration plan and SIP for the 1-hour ozone standard for the BR area (67 FR 61786) published on October 2, 2002, as well as in the approval of the State's NNSR procedures (67 FR 61260) published on September 30, 2002. In the approval of the attainment demonstration, we concluded that the State had adequately demonstrated that additional NO_X reductions will contribute to the attainment of the ozone NAAQS, which is the basis for the approval of this request from the State of Louisiana that EPA rescind the NO_X exemptions. Since the NO_X exemptions were granted to the State of Louisiana in 1996, modeling techniques and emission inventory methodologies/tools have been enhanced and improved. We reviewed and approved the new modeling for the BR area's ozone attainment demonstration plan and SIP (67 FR 61786, October 2, 2002) as leading to attainment of the standard and to overall benefit to reducing ozone. This attainment demonstration plan and SIP are now in effect. Louisiana conducted extensive Urban Airshed Modeling (UAM) in support of its revised SIP. The UAM provides the technical basis to support NO_X emission credits used to offset VOC increases. The LDEQ conducted approximately 100 UAM V simulations to determine the emission control strategy direction, emission control strategy level, and emission control region required to demonstrate attainment. The UAM clearly demonstrated that NO_X reductions are more effective than VOC reductions at reducing ambient ozone concentrations in the BR area. The UAM sensitivity simulations indicate that a 30 percent ''across the board'' reduction in VOC emission yielded less than a 1 part per billion decrease in the ozone peak for the 3 ozone episodes modeled. Accordingly, a reduction of one ton of NO_X emissions was more beneficial than an equivalent reduction in VOC emissions. On the basis of this modeling, Louisiana also determined that VOC emission credits should not be allowed to offset NO_X increases.

The BR area is currently designated as a serious ozone nonattainment area (40 CFR 81.319). A major stationary source in the BR ozone nonattainment area will need to comply the new offset ratios as a part of the NNSR procedures. The NNSR procedures allow an affected source to implement the Lowest Achievable Emission Rate (LAER). For a nonattainment area with a classification of serious for ozone, the minimum offset ratio for VOCs and for NO_X is 1.20 to 1 if LAER technology is implemented, or 1.40 to 1 using internal offsets if LAER is not used. For a nonattainment area classified severe for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.30 to 1 with LAER, or 1.50 to 1 using internal offsets without LAER. As defined by section 171 of the Act the term LAER refers to either the most stringent emission limit contained in the state plan of any state for the applicable category of sources, or the most stringent emission limitation achieved in practice within an industrial category.

Adoption of offset ratios like 1.2 to 1, 1.4 to 1, or 1.5 to 1 (greater than 1 to 1), as a part of the NNSR procedures, will translate into the environment becoming the beneficiary of additional twenty, forty, or fifty percent reductions in emissions, as the case might be. Under Louisiana's NNSR procedures, all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. The NO_X credits will be allowed to offset VOC increases, but not vice versa. Although NO_X credits may be allowed to offset VOC increases, we believe there are several regulatory measures in place that limit the ability of a source to exchange increases in VOCs with NO_X reductions. All emission reductions claimed as offset credit for significant net VOC increases shall be from decreases of either NO_X or VOCs, or any combination of NO_X and VOC decreases. If NO_X decreases are used for VOC increases, the permit for which the offsets are required shall have been issued on or before November 15, 2005. The LDEQ has identified, in its NNSR program, November 15, 2005, as a ''sunset date'' after which no permits will be issued or modified allowing NO_X credits to offset VOC increases. *See* 67 FR 61260. On September 30, 2002 (67 FR 61260) we approved Louisiana's NNSR program.

Furthermore, VOC emissions are separately regulated under EPA's Maximum Achievable Control Technology (MACT) standards for the major sources of air toxics.

Rescission of the NO_X exemptions and implementation of additional NO_X control requirements for point sources in the BR ozone nonattainment area will have an environmental benefit. Rescission of the NO_X exemptions will require the State to implement applicable NO_X provisions for: RACT, NNSR, banking, vehicle I/M, and general and transportation conformity. As a result of the rescission of the NO_X exemptions, Louisiana will now have to meet all of the applicable NO_X requirements of the Act. The State has already adopted and promulgated these applicable requirements. *See* section 1 of this document for a listing of these regulatory measures.

Based on the above information, we support the State's request and are rescinding the NO_X exemptions.

Comment #4: LEAN commented that the State should not have been granted the exemption, that EPA mistakenly granted the exemptions to allow LDEQ to issue permits for emissions of NO_X in amounts far greater than would have been legal without the exemptions, and the rescission will increase pollution in the area. The commenter suggests the NO_X exemptions were unjustified.

Response to Comment #4: We disagree with the commenter's contention that the NO_X exemptions were mistaken or unjustified, although the issue is now moot in any case. We refer the commenter to our rulemaking approving the NO_X exemptions (61 FR 2438, January 26, 1996, and 61 FR 7218, February 27, 1996), and response to comment #3 above concerning our position for granting the exemptions. The EPA also disagrees that the rescission will increase pollution in the BR area and refer the commenter to our response to comment #3 of this document.

In this action, EPA is rescinding the NO_X exemptions. Therefore, the commenter's concern about EPA's granting the exemptions is misplaced. Seven years have elapsed since the LDEQ's previous modeling demonstration which showed that additional NO_X reductions were not needed for BR area's attainment, and the most recent modeling events demonstrating that control of NO_X emissions will contribute to attainment in the BR area. The pollution control technology, including air modeling, is a dynamic and evolving field. The model used by the LDEQ to support its request for approval of the NO_X waiver was Urban Airshed Model (UAM) IV, which was an EPA-approved photochemical grid model. The model used by the LDEQ to support its request for rescission of the NO_X waiver is UAM V, a more recently EPA-approved photochemical Grid Model. This represents a significant refinement in modeling technology. In addition, emission inventory methodologies/tools have been improved during this seven year period from when the State initially requested the NO_X exemptions. The commenter also fails to present or show any specific data corroborating the comment. In the absence of specific data or information, and for the other reasons stated above, we disagree with the commenter that the exemptions were mistakenly granted and that the

rescission will cause an increase in air pollution in the BR area.

Comment #5: LEAN commented that the LDEQ's incorrect representations to EPA have resulted in a rescission that will lead to the generation of emission credits from NO_X reductions that could be used to avoid NNSR for VOCs and to offset VOC increases.

Response to Comment #5: The EPA disagrees with the commenter's characterization of the impact of the rescission of the NO_X exemptions and Louisiana's offsets procedures. Our basis for this action is governed by section 182(f) and 182(b)(1) of the Act and is independent of any permitting procedures.

As stated in our response to comment #3 of this document, a major stationary source in the BR ozone nonattainment area now will need to comply with the new offset ratios (1.4 to 1 or 1.2 to 1) as a part of the NNSR procedures. *See* Table 1, section III in 67 FR 61260 (September 30, 2002). The offset ratios are greater than 1 to 1 and therefore will mean additional reductions in air emissions. In response to a similar comment EPA received during its rulemaking on Louisiana's revised NNSR regulations, EPA noted:

> Under the CAA and the revised Louisiana rule, however, emissions offsets do not serve to allow a facility to avoid new source review. Instead, a facility that will exceed the emission thresholds in the relevant attainment category (*see* Table 1) must obtain offsets as a condition of receiving a new source review permit. The generation and use of such emissions credits must be consistent with the definition of ''Surplus Emission Reductions'' in LAC 33:III.605. The LDEQ's nonattainment NSR procedures also require that emission reductions claimed as offset credit shall be sufficient to ensure ''Reasonable Further Progress'' toward attainment, that emission offsets provide a net air quality benefit, and that the offsets must be federally enforceable, before commencement of construction of the proposed new source or major modification. Offsets thus are a vital part of the mechanism that ensures that new projects and modifications will not harm the attainment status of the area in question. The effect of each of the above scenarios would be a reduction in overall emissions for the Baton Rouge area, because the new sources would have to seek minimum offsets in excess of what the new source is expected to release as emissions. Finally, the commenter may have intended, with the reference to offsets used to avoid NSR, to refer to the ''netting'' analysis conducted under part 504(A)(4) of the proposed rule. In this analysis, the net emissions increase from the construction of a new major stationary source or any major modification at a stationary source is compared to the values in Table 1 [of 67 FR 61260] to determine whether a new source review must be performed. The inter-precursor trading provision of the revised rule, however, applies only to the use of emission offsets, not to the netting analysis. *See* LAC 33:III.504.G. (definition of major modification, providing that ''VOC and NO_X emissions shall not be aggregated for the purpose of determining significant net emissions increase.''). LDEQ has confirmed to the EPA that this interpretation of the rule is correct. Accordingly, the potential harm the commenter cites —*i.e.*, the use of NO_X emission reductions to avoid new source review for new VOC emissions cannot occur as a result of the revised rule.

67 FR 61260 at 61264 (September 30, 2002).

Furthermore, EPA has stated on several occasions that any emission reduction credits in Louisiana will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use as offsets. *See* 67 FR 60877 (September 27, 2002), 67 FR 60871 (September 27, 2002), and 67 FR 61260 (September 30, 2002). For the above reasons, EPA disagrees with the commenter's characterization of the impact of this final action.

Comment #6: LEAN commented that the LDEQ's intention is to allow facilities to avoid reductions in VOCs to the detriment of the health and welfare of residents of the BR area.

Response to Comment #6: We disagree with the commenter. The EPA believes the revised NNSR rule will improve air quality for all residents of the BR area. We refer the commenter to our responses to comments #3 and #4 of this document with regard to our position on the NO_X exemptions and related modeling issues. Our final action to rescind the NO_X exemptions is made pursuant to section 182(f) and 182(b)(1) of the Act. The commenter fails to provide any specific data to substantiate the comment concerning the health and welfare of residents of the BR area as a result of EPA's actions regarding the NO_X exemptions. Furthermore, the State has adopted and is implementing NO_X control measures not previously in the Louisiana's SIP. *See* 67 FR 60877 (September 27, 2002) for more information. We believe that implementation of these new NO_X control measures will strengthen Louisiana SIP, provide for additional safeguards to the health and welfare of residents of the affected parishes, and contribute to bringing the BR area into attainment with the ozone NAAQS.

Comment #7: LEAN commented that many or most of the facilities that benefitted from the NO_X exemptions are located in lower income communities with minority populations greater than the national average and that many of the residents live near the fence line of facilities or surrounded by multiple major polluters. The commenter contends that increased VOC emissions resulting from emission trading within the nonattainment area will result in environmental injustice and disparate impacts.

Response to Comment #7: The EPA disagrees that this action will result in environmental injustice or disparate impacts. We continue to encourage and support fact-finding efforts that involve local communities and the State of Louisiana. The EPA is committed to the principles of environmental justice to ensure that all Americans have equal access to the decision making process. We believe that the public process for the 1996 NO_X exemption document provided everyone the opportunity for meaningful involvement and met all of the legal requirements of section 110(a) of the Act and 40 CFR part 51. We believe the recent revisions to the SIP will improve air quality for all of the BR area.

We do not agree that the use of Inter-pollutant Trading (IPT) will overburden minority communities in the area. Louisiana's recent SIP revisions change only specific portions of the LDEQ regulations. The regulations found at LAC 33:III.504 continue to require that emission offsets provide a net air quality benefit, and that the offsets must be federally enforceable before commencement of construction of the proposed new source or major modification. The emission offsets must meet all applicable state requirements, any applicable New Source Performance Standard in 40 CFR part 60, and any National Emission Standard for Hazardous Air Pollutants (NESHAPs) in 40 CFR part 61 or part 63. Furthermore, LAC 33:III, Chapter 51 (Comprehensive Toxic Air Pollutant Emission Control Program) established ambient toxic air standards. Toxic Air Pollutants (TAPs) are a group of state-regulated chemicals consisting mainly of VOCs. The majority of TAPs are also Hazardous Air Pollutants (HAPs). Major sources of TAPs are regulated under LAC 33:III, Chapter 51, Louisiana's comprehensive toxic air pollutant emission control program. TAPs are categorized into three groups (Class I, II, or III) based on their relative toxicities. If emissions of a Class I or II TAP increase by an amount greater than its minimum emission rate, a *de minimis* level established for each TAP in LAC 33:III.5112, sources of such compounds must be controlled by means of Maximum Achievable Control Technology (MACT). Furthermore, the impact of all TAP emissions must be below their respective health-based ambient air standards, which are also

set forth in section 5112. In this way, any increase in HAP emissions will be minimized and therefore, any impact on minority communities living close to industries involved in trades of VOC increases for NO_X reductions would also be minimized. The effect of IPT in minority communities is most appropriately taken into account during the proceedings on a particular proposed NNSR permit.

Analysis of impacts under existing authority and subsequent review by EPA under Title V of the Act (Permits), help to ensure that these rules will not result in disproportionately high and adverse environmental or human health effects on minority or low-income communities. As the Administrator stated in her Memorandum of August 9, 2001, ''Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities.'' This includes the Act, particularly the ''alternative sites analysis.'' Under section 173(a)(5) of the Act, an alternative sites analysis must be conducted for each NNSR permit, which requires consideration of, among other things, the ''social costs'' of the construction or modification, *e.g.*, the disparate impact on minority communities. The Louisiana regulation implementing this requirement, LAC 33:III.504.D.7, contains the same requirement:

> As a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, the public record must contain an analysis * * * of alternate sites, sizes, production processes, and environmental control techniques and demonstrate that the benefits of locating the source in a nonattainment area significantly outweigh the environmental and social cost imposed.

The LDEQ is also subject to the ''IT'' requirements which were articulated by the Louisiana Supreme Court in a case concerning the decision to issue a hazardous waste permit to the IT Corporation. *Save Ourselves, Inc.* v. *Louisiana Environmental Control Comm'n,* 452 So. 2d 1152 (La. 1984) (*IT*). Under the *IT* requirements, which would apply to NNSR offsets, LDEQ addresses whether:

1. The potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible;
2. A cost-benefit analysis of the environment impact costs balanced against the social and economic benefits of the project demonstrates that the latter outweighs the former; and
3. There are alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable. *In the Matter of Rubicon, Inc.,* 670 So.2d 475, 483 (La. App. 1996).

While the weighing of costs and benefits required under the *IT* decision has been interpreted as a ''rule of reasonableness,'' the *IT* Court and subsequent courts have noted that ''[t]he DEQ's role as the representative of the public interest does not permit it to act as an umpire passively calling balls and strikes for adversaries appearing before the Secretary; the rights of the public must receive active and affirmative protection at the hands of DEQ.'' *Matter of American Waste and Pollution Control Co.,* 642 So.2d 1258, 1262 (La. 1994) (internal punctuation omitted) (quoting *IT,* 452 So.2d at 1157).

In sum, we believe the disparate impacts alleged by LEAN will be addressed in individual permit proceedings, at which time factual information regarding the scope of the impact and the affected community will be available. Moreover, EPA is entitled to review each Title V permit, and thus can object even in the absence of a citizen petition if a Title V permit fails to comply with applicable requirements of the Act or SIP. For example, in this instance environmental justice issues could be considered and addressed through section 173(a)(5), as discussed above. Thus, we may address environmental justice issues raised by NNSR permits as part of the Title V permit review process. Even where the Agency does not have authority to object to a Title V permit, it may consider environmental justice issues raised by the permit. Such a review may lead to EPA addressing such issues in another manner, such as investigation of Title VI complaints or coordination with States on appropriate resolutions. We are committed to ensuring compliance with the applicable requirements of the Act and the State's SIP through the permit review process, the State's standard for TAPs, which we believe are protective of human health and the environment. Since any trade would be linked to a nonattainment new source review permit, public notice would be mandatory and the public would have the opportunity to request a public hearing on the proposed project. Further, the information in the LDEQ banking database, defined at LAC 33:III.605, will be available to the public upon request. We believe that such opportunities do provide for effective public participation, enhance local communities' involvement, and address potential environmental justice concerns.

The commenter makes a number of statements about the demographics and health of poor and minority populations in the BR area. However, the commenter does not provide EPA with any concrete references or resources to support its position. For these reasons, we disagree with the commenter that this final action will result in environmental injustice or disparate impacts.

Comment #8: LEAN commented that delayed or incomplete implementation of Louisiana's hazardous air pollutant program and the proposed rescission of the NO_X exemption are LDEQ's first steps toward reducing the level of public protection from a wide array of toxics and carcinogens which qualify as VOCs. LEAN continues by commenting that recission of the NO_X exemption will allow inter-pollutant trading.

Response to Comment #8: We refer the commenter to our response to comment #7 of this document.

In addition, section 112 of the Act requires EPA to regulate emissions of HAPs from a published list of industrial sources referred to as ''source categories.'' As required under the Act, EPA has developed a list of source categories that must meet control technology requirements for these toxic air pollutants. The EPA has developed (or is developing) NESHAP regulations for all industries that emit one or more of the pollutants in significant quantities. We believe these efforts and the State's Chapter 51 rules have partly contributed to the significant reductions of VOC and toxic emissions, within the BR area, as presented in our response to comment #4 of this document. The Table of completed toxics regulations and relevant information is available at *http://www.epa.gov/ttn/atw/mactfnl.html.*

We are taking this final action pursuant to section 182(f) and 182(b)(1) of the Act. Although the rescission of the NO_X exemption may have implications for permitting, we are not taking action on IPT in this rulemaking. Our approval of Louisiana's IPT program was based on a recent photochemical grid modeling conducted for the BR area and was a separate rulemaking. *See* 67 FR 61260 (September 30, 2002).

Comment #9: LEAN commented that LDEQ and its constituents in the regulated community intended to ''scam'' EPA to avoid NNSR in the BR area by requesting the NO_X exemption, and that the State produced inconsistent theories, using the same modelers, about the cause of ozone nonattainment for approximately 8 years.

Response to Comment #9: We disagree with the commenter's characterization of the State's request for a NO_X exemption as a ''scam.'' We refer the commenter to our rulemaking actions on the NO_X exemptions and our response to comment #3 of this document for explanation of our bases for previously granting a NO_X exemption to Louisiana. We also refer the commenter to response to comment #4 of this document for an explanation of our position concerning the State's recently submitted air modeling.

The modeling protocol and scenarios were developed as a result of a series of meetings and public involvement processes. The result of the recent BR area modeling (showing that control of NO_X emissions contributes to attainment in the BR area) is consistent with findings for numerous nonattainment areas across the country (*e.g.*, Atlanta, Washington, DC, St. Louis, and Greater Connecticut). Based on our review and approval of the BR area photochemical grid modeling underlying the State's rescission request, EPA finds the State's request reasonable. *See* October 2, 2002 (67 FR 61786).

The commenter fails to provide any specific data to substantiate the concerns over presentation of the modeling theories or scenarios. In the absence of specific data contradicting the photochemical grid modeling that was recently conducted for the BR area, EPA considers the commenter's statement unsubstantiated, and disagrees with the commenter's position in this regard.

Comment #10: LEAN commented that the State intends to use credits from easy reductions in unregulated NO_X emissions to abrogate NNSR requirements for VOCs.

Response to Comment #10: The EPA disagrees with the commenter's interpretation that facilities which elect to implement NO_X RACT would generate reductions eligible for use as emission offsets and abrogate NNSR for VOCs. We also refer the commenter to response to comment #5 of this document with respect to its contention that the rescission will allow facilities to avoid NNSR requirements.

Louisiana promulgated its revised NO_X rules on February 20, 2002 (Louisiana Register, Vol. 28, No. 2). On February 27, 2002, the State submitted to EPA the revised NO_X rules for the BR area and its Region of Influence. We approved the revised NO_X rules on September 27, 2002 (67 FR 60877). These NO_X rules require certain affected categories of NO_X-generating facilities to achieve RACT ''as expeditiously as possible, but no later than May 1, 2005.'' This date takes into consideration the time that affected categories of NO_X-generating facilities may need to procure, calibrate and implement RACT. Section 173(c)(2) of the Act states that reductions otherwise required by the Act are not creditable as offsets. Although the rule permits affected categories of NO_X-generating facilities to achieve compliance with NO_X RACT no later than May 1, 2005, the rule became effective when promulgated. Therefore, facilities achieving NO_X RACT compliance before May 1, 2005, are creating emission reductions as required by law. Therefore, such facilities will not obtain Emission Reduction Credits (ERCs) and cannot offset VOC emissions by early NO_X RACT implementation. Furthermore, emissions decreased by a voluntary action must be permanent in order to meet the surplus ERC criteria. Because the NO_X RACT rule provides for compliance no later than May 1, 2005, reductions made before that date could not be considered permanent, and therefore could not be surplus.

The State has adopted and we have approved new NO_X control measures not previously in the Louisiana's SIP. *See* September 27, 2002 (67 FR 60877). These NO_X control measures meet the Act's requirements for RACT. *See also,* our July 23, 2002 (67 FR 48095), and July 31, 2002 (67 FR 49647) proposed rulemaking documents. The EPA defines RACT as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. We believe that implementation of these NO_X control measures will strengthen the Louisiana SIP. As previously noted in this document, any ERCs must be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use as an offset. For these reasons, we disagree with the commenter.

Comment #11: LEAN commented that rescission of the NO_X exemption should not be used to create NO_X ERCs or offsets that would not have existed if EPA had not granted the NO_X exemption.

Response to Comment #11: As stated previously, in our May 7, 2002 (67 FR 30638) proposal, in granting the NO_X exemption, EPA reserved the right to reverse the approval of the exemption if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO_X sources will contribute to the BR area's attainment of the ozone NAAQS. The State of Louisiana, therefore, requested that EPA rescind the NO_X exemption based on this new modeling. We believe that the State has adequately demonstrated that additional NO_X reductions will contribute to attainment of ozone NAAQS. The State of Louisiana is not the only state that has requested EPA to rescind its NO_X waiver based on updated photochemical grid modeling information. We reiterate that any emission reduction credits in Louisiana will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use as offset. For practical purposes, to refrain from introducing additional uncertainties and variables, and to minimize inconsistencies, the changes (increases or decreases) in NO_X emissions will need to adhere to applicable rules and regulations instead of becoming a function of an arbitrary and variable baseline level for NO_X based on what such emissions would/could have been 8 years or so ago, had no exemptions been issued. Furthermore, upon rescission of the NO_X exemptions, the State will be required to implement the applicable requirements of the Act for control of NO_X emissions, including RACT, NNSR, vehicle I/M, banking, and general and transportation conformity. Rescission of the NO_X exemption and implementation of the State's newly promulgated NO_X RACT regulations will strengthen the existing Louisiana SIP. Therefore, we disagree with the commenter's position in this regard.

This concludes our responses to the written comments we received concerning this rulemaking.

5. Where Can I Find Background Information on the Exemptions?

To find information on the proposed rescission of the section 182(f) and 182(b)(1) NO_X exemptions for the BR area you can refer to our May 7, 2002 (67 FR 30638) publication. To find information on the approval of the section 182(f) and 182(b)(1) NO_X exemptions you can refer to our January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR 7218) rulemakings. To find information on the proposed approval of the section 182(f) and 182(b)(1) NO_X exemptions you can refer to our August 18, 1995 (60 FR 43100), and October 6, 1995 (60 FR 52349) rulemakings. A copy of the recently completed modeling, NO_X controls and NNSR regulations, and I/M SIP revision that Louisiana submitted to EPA are available from EPA and LDEQ at the addresses provided above.

6. What Areas in Louisiana Will Today's Rulemaking Affect?

The following table contains a list of parishes affected by today's rulemaking.

Rule provision	Affected parishes
Rescission of NO_X Exemptions.	Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge

If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

7. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order 12866, entitled ''Regulatory Planning and Review.''

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

C. 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.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 750 employees and is a major source of NO_X; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

I certify that this action will not have a significant economic impact on a substantial number of small entities. 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.

D. 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. The 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.

E. 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. The 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.

F. 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. The emissions sources affected by today's rulemaking action are not located within the Indian tribal nations; therefore, this rule 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.

G. 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.

H. 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.

I. 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.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 June 4, 2003.

K. 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 July 7, 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, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 25, 2003.

Christine Todd Whitman,

Administrator.

■ 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 T—Louisiana

■ 2. § 52.992 is amended by adding paragraph (e) to read as follows:

§ 52.992 Areawide nitrogen oxides (NO_X) exemptions.

* * * * *

(e) On September 24, 2001, and on December 31, 2001, the LDEQ requested that EPA rescind the Baton Rouge section 182(f) and 182(b)(1) NO_X exemptions that were approved by EPA, and published in the **Federal Register** on January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR 7218). The State based its request on photochemical grid modeling recently performed for the Baton Rouge State Implementation Plan (SIP) which indicates that controlling NO_X sources will assist in bringing the Baton Rouge area into attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. On May 7, 2002, EPA proposed approval of the State's request to rescind both NO_X exemptions. Based on our review of the State's request and the supporting photochemical grid modeling the NO_X exemptions are rescinded on May 5, 2003.

[FR Doc. 03–10888 Filed 5–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN152–1a; FRL–7481–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to volatile organic compound (VOC) regulations in 326 Indiana Administrative Code (IAC) 8–1–2. Indiana submitted a request for this State Implementation Plan (SIP) revision on October 21, 2002, and provided additional material to EPA on January 10, 2003. This revision affects miscellaneous metal coating operations performing dip or flow coating. One change would enable dip and flow coating operators to use a rolling 30-day average to meet VOC content limits, instead of the current daily compliance requirement. EPA has determined that the extended averaging period is more practical for these sources because of the difficulties associated with intermittently adding solvent and the higher transfer efficiency associated with dip and flow coating operations. Solvent is intermittently added to the coating tank to maintain proper viscosity. Dip and flow coating generally has a higher transfer

efficiency, which results in lower emissions, than spray coating. Indiana also added new equivalent emission limits for dip and flow coating, and made some additional, minor revisions. For the reasons discussed below, EPA is approving this submission.

DATES: This rule is effective on July 7, 2003, unless the EPA receives relevant adverse written comments by June 4, 2003. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, E-Mail: *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

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I. What Is Indiana's Current Requirement?

The revisions to Indiana's SIP apply solely to dip and flow coating operations. Dip coating operations dip parts into a tank containing the coating to coat them. In flow coating, the coating pours over the parts to coat them. Both dip and flow coatings have better transfer efficiencies than any type of spray coating. Transfer efficiency is the volume of solids deposited over the volume of solids used. The high transfer efficiencies of both dip and flow coatings mean that waste and VOC emissions are minimal. Under 326 IAC 8–1–2, dip and flow coating facilities have been required to use daily averaging to meet VOC content limits.

Dip or flow coating operations were required to use the equivalent emission limits in terms of mass per volume of solids deposited. Now they can use equivalent emission limits in terms of mass per volume of solids. The difference is that the former includes the transfer efficiency in calculating the limits. A transfer efficiency of 60% was used. Since dip and flow coating have high transfer efficiencies, complying with the new equivalent emission limits is easier for these sources. The underlying VOC content limits used to calculate the equivalent emission limits remain unchanged.

II. What Are the Changes From the Current Rule?

Under the revisions submitted by Indiana, owners and operators of dip coating and flow coating operations can now use the VOC content averaging method detailed in 326 IAC 8–1–2 (a)(9)(B), while provides for a rolling 30-day average. The average includes the VOC content from all coating and solvent added during the 30-day period.

Indiana also added new equivalent emission limits at 326 IAC 8–1–2 (a)(9)(A) for dip and flow coating operations. For these sources, the new limits replace the general miscellaneous metal coating limits found at 326 IAC 8–1–2 (a)(5)(C). Equivalent emission limits are expressed in terms of mass VOC per volume of coating solids, which is necessary to implement the VOC content averaging method. The equivalent emission limits for dip or flow coating are 1.22 kilograms VOC per liter of solids (kg/l) (10.2 pounds VOC per gallon (lb/gal)) for clear coatings, 0.80 kg/l (6.7 lb/gal) for air dried and extreme performance, and 6.1 kg/l (5.1 lb/gal) for all other coatings.

Indiana also made several minor revisions to 326 IAC 8–1–2. Most of these revisions are simple rewording or adding a word or phrase for clarity to portions of the rule. The equivalent emission limits for miscellaneous metal coating have been moved from 326 IAC 8–1–2 (a)(9)(A) to (a)(5)(C). Indiana also establishes a baseline solvent density of 7.36 pounds of VOC per gallon in 326 IAC 8–1–2 (b)(1).

The revisions to 326 IAC 8–1–2 were adopted on August 7, 2002, by the Air Pollution Control Board. The rule was filed with the Secretary of State on November 15, 2002, and effective on December 15, 2002. It was published in 26 Indiana Register 1073 on January 1, 2003.

III. What Is EPA's Analysis of the Submission?

According to Indiana, the current requirement to determine compliance on a daily average basis was inconsistent with certain procedures required for proper operation of dip and flow facilities. In order to maintain proper coating viscosity, so that the coating will be applied correctly, solvent thinner (generally all VOCs) has to be intermittently added and there are practical difficulties with allocating the thinner to a specific day because it is not directly applied to the metal part, as in spray coating.

In addition, dip and flow coating operations have higher transfer efficiency, which results in lower emissions, than spray painting. Therefore, the 30-day rolling average approach is reasonable because of the difficulties associated with intermittently adding solvent thinner and the higher transfer efficiency associated with dip and flow coating operations.

The new equivalent emission limits for dip or flow coating operations are consistent with the recommended emission limits in EPA guidance for surface coating of miscellaneous metal parts and products. The baseline solvent density of 7.36 lb VOC/gal in 326 IAC 8–1–2 (b)(1) is acceptable. This is the average solvent density, so it will provide a reasonable emission limit. The actual solvent density is required in 326 IAC 8–1–2 (b)(2) to calculate the actual emissions. The other rule revisions are acceptable as they help clarify the rule.

IV. What Are the Environmental Effects of These Actions?

Reactions involving VOC and nitrogen oxides in warm air form tropospheric (ground level) ozone. Ozone decreases lung function, causing chest pain and coughing. It can aggravate asthma and other respiratory diseases. The highest concentrations of ozone occur in the warm months of the year. Children playing outside and healthy adults who work or exercise outside also may be harmed by elevated ozone levels. Ozone also reduces vegetation growth and reproduction.

The revisions to 326 IAC 8–1–2 make it more practical for sources to continue using dip or flow coating. Dip and flow coating generally has a higher transfer efficiency than spray coating, which results in lower VOC emissions. Therefore, these revisions should not have an adverse impact on air quality.

V. What Rulemaking Actions Are the EPA Taking?

The EPA is approving, through direct final rulemaking, revisions to VOC emissions regulations for Indiana miscellaneous metal coating operations using dip or flow coating contained in 326 IAC 8–1–2. These revisions consist of changing the averaging period for dip and flow coating facilities, adding equivalent emission limits, creating a baseline solvent density, and rewording several portions of the rule. For the reasons discussed above, EPA believes these revisions are reasonable and consistent with the Act.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are 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 July 7, 2003 without further notice unless we receive relevant adverse written comment by June 4, 2003. If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VI. Statutory and Executive Order Reviews.

Executive Order 12866: Regulatory Planning and Review

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.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13132: Federalism

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.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

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.*).

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).

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 July 7, 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, Volatile organic compounds.

Dated: April 2, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, 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 P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(158) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(158) On October 21, 2002 and January 10, 2003, Indiana submitted revised volatile organic compound regulations for dip and flow coating operations. The revisions include replacing daily compliance with a rolling thirty day average and adding new equivalent emission limits.

(i) Incorporation by Reference.

Amendments to Indiana Administrative Code Title 326: Air Pollution Control Board, Article 8: Volatile Organic Compound Rules, Rule 1: General Provisions, Section 2: Compliance Methods. Filed with the Secretary of State on November 15, 2002, and effective on December 15, 2002. Published in 26 *Indiana Register* 1073 on January 1, 2003.

[FR Doc. 03–10997 Filed 5–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7491–1]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule; technical corrections.

SUMMARY: The State of Texas has applied for Final authorization to revise its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA reviewed Texas' application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. As such, EPA published an immediate final rule on April 15, 2003 for a 30-day public review and comment period. The comment period will run until close of business May 15, 2003. Today's publication is a technical correction to the State Analog chart, listing the State regulations that are equivalent to the Federal rules.

DATES: This technical correction is in regard to the preamble of an immediate final rule which will become effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 1445 Ross Avenue, Dallas Texas 75202–2733, (214) 665–6444.

SUPPLEMENTARY INFORMATION:

A. Technical Corrections

There were printing errors which inadvertently deleted some of the State's regulatory citations from the State of Texas Commission on Environmental Quality (TCEQ) **Federal Register** notice published on April 15, 2003, 68 FR 18126–18133, that notice listed the State's regulations that are equivalent to the rules promulgated to the Federal RCRA implementing regulations in 40 CFR parts 124, 260–268, 270, 273 and 279. Some of the State regulations in that chart were deleted and the following chart lists the correct citations of the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs; [61 FR 34252] July 01, 1996. (Checklist 153).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.78(f)(3)(A)–(G) and (g)(3)(A)–(G), effective October 19, 1998.
2. Hazardous Waste Treatment; Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments and Containers; [61 FR 59931] November 25, 1996; [59 FR 62896] December 6, 1994; [60 FR 26828] May 19, 1995; [60 FR 50426] September 29, 1995; [60 FR 56952] November 13, 1995; [61 FR 4903]; [61 FR 28508] June 5, 1996]. (Checklists 154, 154.1, 154.2, 154.3, 154.4, 154.5, and 154.6).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health and Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.31, effective November 15, 2001, as amended; Section 335.24(e), and effective April 4, 1999, as amended, Sections 335.69(f)(2), 335.69(a)(1)(A)–(B), effective November 15, 2001, as amended; Sections 335.152(a)(1), 335.152(a)(4), 335.152(a)(7)–(9), 335.152(a)(16)–(19), effective November 18, 2001; 335.111(a), effective November 15, 2001; 335.112(a)(1), 335.112(a)(4), 335.112(a)(8)–(10), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001; 305.122(a), effective November 15, 2001, as amended and 305.50(4)(A), effective November 18, 2001, as amended.

Federal citation	State analog
3. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1922] January 14, 1997. (Checklist 155).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.341(c), effective April 30, 2000.
4. Military Munitions Rule; Hazardous Waste Identification and Management Explosives Emergencies; Manifest Exemptions for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 and 335.61, effective April 12, 2001, as amended; Sections 335.10(h), effective May 20, 1999, 335.91(f), and (g), 335.41(d)(2), effective April 12, 2001, as amended, 335.271, 335.272, effective April 12, 2001, as amended; 335.152(a)(4), 335.152(a)(20), 335.112(a)(4), 335.112(a)(22), effective November 18, 2001, as amended and 305.69(j) effective April 12, 2001, as amended.
5. Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste), effective May 30, 2001, as amended; 335.17(a)(9)–(12), and 335.24(c)(2), effective April 4, 1999 as amended. The State law is more stringent than the Federal rule because the State does not have provisions equivalent to 40 CFR 268(a)(10) regarding tolling agreements. State law has no provisions equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.
6. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.31, effective October 19, 1998; Sections 335.152(a)(17)–(18), 335.152(a)(22)(E), 335.112(a)(19)–(20), effective April 12, 2001; 335.221(a)(15), 335.221(17)–(18), effective April 4, 1999 and 335.221(a), effective April 4, 1999.
7. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] June 17, 1997. (Checklist 159).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001) effective September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, 30 Texas Administrative Code Section 335.1 (Definition of Hazardous waste) effective January 26, 1994, as amended; Section 335.431(a)(1), effective April 20, 2000.
8. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, [62 FR 37694] July 14, 1997. (Checklist 160).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective April 30, 2000.

Federal citation	State analog
9. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production, [62 FR 45568] August 28, 1997. (Checklist 161).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective April 30, 2000.
10. Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendments, [62 FR 64636] December 8, 1997. (Checklist 163).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.152(a)(1), 335.152(a)(4), 335.152(a)(17)–(19); 335.112(a)(1), 335.112(a)(4), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001, as amended; 305.50(4)(A), effective March 21, 2000.
11. Kraft Mill Steam Stripper Condensate Exclusion, [63 FR 18504] April 15, 1998. (Checklist 164).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of solid waste) (A)(iv), effective November 15, 2001.
12. Recycled Used Oil Management Standards; Technical Correction and Clarification, [63 FR 24963] May 6, 1998. (Checklist 166 & 166.1).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Chapter 371, effective September 1, 1991, as amended; 30 Texas Administrative Code Section 3355.78(j), effective October 19, 1998; Sections 335.24(c)(4)(A)–(C), effective April 14, 1999; Sections 324.1, 324.3, 324.6, 324.11–14, effective August 8, 1999.
13. Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes, [63 FR 28556] May 26, 1998. (Checklist 167 A).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.1 (A)(iv) (definition of solid waste), effective May 30, 2001, as amended; Section 335.431(c), effective November 15, 2001.
14. Land Disposal Phase IV—Hazardous Soils Treatment Standards and Exclusions, [63 FR 28556] May 26, 1998. (Checklist 167 B).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.69(f)(4)(C), effective March 18, 2001; Section 335.431(c) , effective November 15, 2001. State law has no provision equivalent to 40 CFR268.44(a), under which EPA may assure a variance from an applicable treatment standard.
15. Land Disposal Restrictions Phase IV—Corrections, [63 FR 28556] May 26, 1998. (Checklist 167 C & 167.C.1).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective November 15, 2001 and Section 335.431, effective April 30, 2000, as amended. State law has no provision equivalent to 40 CFR268.44(a), under which EPA may assure a variance from an applicable treatment standard.

Federal citation	State analog
16. Mineral Processing Secondary Material Exclusion, [63 FR 28556] May 26, 1998. (Checklist 167 D).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of solid waste), effective May 30, 2001.
17. Bevil Exclusion Revision and Clarification, [63 FR 28556] May 26, 1998. (Checklist 167 E).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001 as amended; 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended.
18. Exclusion of Recycled Wood Preserving Wastewater, [63 FR 28556] May 26, 1998. (Checklist 167 F).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste)(A)(iv), effective May 30, 2001 as amended; 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended.
19. Hazardous Waste Combustors Revised Standards, [63 FR 33782] June 19, 1998. (Checklist 168).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001; Sections 305.69(i), 305.69(k), effective April 12, 2001; 305.51(a)(8), effective December 5, 1999.
20. Petroleum Refining Process, [63 FR 42110] August 6, 1998; [63 FR 54356] October 9, 1998. (Checklist 169 & 169.1).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of hazardous waste) effective January 26, 1994, as amended; 335.1(129)(A)(iv) (definition of a solid waste), effective May 30, 2001, as amended; 335.431, effective April 30, 2000, as amended.
21. Land Disposal Restrictions Phase IV-Zinc Micronutrient Fertilizers, Administrative Stay, [63 FR 46332] August 31, 1998. (Checklist 170).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431, effective November 15, 2001.
22. Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Waste from Carbamate Production, [63 FR 47409] September 4, 1998. (Checklist 171).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective November 15, 2001.

Federal citation	State analog
23. Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags [63 FR 48124], September 9, 1998 (Checklist 172).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431, effective November 15, 2001, as amended.
24. Land Disposal Restrictions—Treatment Standards for Spent Potliners from Primary Aluminum Reduction (KO88), [63 FR 51254] September 24, 1998. (Checklist 173).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective November 15, 2001.
25. Hazardous Remediation Waste Management Requirements (HWIR–Media), [63 FR 65874] November 30, 1998. (Checklist 175).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Sections 335.1 (definition of staging pile), and 335.111(a), effective November 15, 2001; 335.431, effective November 15, 2001; and 335.152(a)(14), effective November 18, 2001.
26. Universal Waste Rule—Technical Amendments [63 FR 71225], December 24, 1998. (Checklist 176).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.261(b)(16)(D), effective April 30, 2000; Section 335.251, effective October 19, 1998.
27. Organic Air Emission Standards: Clarification and Technical Amendments [64 FR 3382], January 21, 1999. (Checklist 177).	Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.69(a)(1)(A)–(B) effective March 18, 2001; 335.152(a)(17), (19), and (21), effective November 18, 2001.
28. Petroleum Refining Process Wastes-Leachate Exemption [64 FR 6806], February 11, 1999. (Checklist 178).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), January 26, 1994 as amended.
29. Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards [64 FR 25408], May 11, 1999. (Checklist 179).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.1 (definition of solid waste), effective May 30, 2001; Section 335.431(c), effective November 15, 2001; and Section 335.69(f)(4)(C), effective March 18, 2001.

Federal citation	State analog
30. Guideline for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act [64 FR 26315], June 14, 1999. (Checklist 180).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.31, effective November 15, 2001.
31. Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps [64 FR 36466], July 6, 1999. (Checklist 181).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of universal waste), effective May 30, 2001; Section 335.2(1), effective April 30, 2000; Section 335.41(j), effective April 12, 2001; Section 335.151(b), effective February 22, 1994; Sections 335.261(a)–(b), effective April 30, 2000; and Section 335.431(b)(3), effective November 15, 2001.
32. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements Technical Correction to Fast-track Rule (MACT Rule), [64 FR 52827] September 30, 1999; [64 FR 63209] November 19, 1999. (Checklist 182 & 182.1).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (129)(A)(iv) (definition of solid waste), effective November 15, 2001, 335.152(a)(13), 335.112(a)(14), November 18, 2001; Section 305.50(4)(A), effective March 21, 200; Section 305.175, effective November 15, 2001; Section 335.152(a)(14), effective November 18, 2001; Section 305.69(i), effective November 15, 2001; Sections 335.1 (definitions), 335.221(a), 335.221(a)(1), 305.50(4)(A), 305.571(b), and 335.222(a)(c), effective November 15, 2001.
33. Land Disposal Restrictions Phase IV—Technical Corrections [64 FR 56469], October 20, 1999 (Checklist 183).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.431(c) effective November 15, 2001.
34. Waste Water Treatment Sludges from Metal Finishing Industry; 180-day Accumulation time [65 FR 12378], March 8, 2000. (Checklist 184).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.69(j)–(l) effective March 18, 2001.
35. Organobromine Production Waste [65 FR 14472], March 17, 2000. (Checklist 185).	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.431(c) effective November 15, 2001.

Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Texas' authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. This final 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.*). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approves under 40 CFR part 271, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255 (1999)), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249(2000)).

This action also is not subject to Executive Order 13045 (62 FR 19885 (1997)), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344 (2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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 prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271.

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: April 21, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–10759 Filed 5–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1157; MM Docket No. 01–216; RM–10223, RM–10495, RM–10496]

Radio Broadcasting Services; Valliant, OK, and Gainesville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 66 FR 47433 (September 12, 2001) this *Report and Order* allots Channel 234C3 to Valliant, Oklahoma, and provides Valliant with its first local aural transmission service. The allotment is restricted to allow the grant of an application filed by Radio One Licenses, L.L.C. to modify the facilities of Station KSOC–FM, Gainesville, Texas. The coordinates for Channel 234C3 at Valliant are 34–01–10 North Latitude and 95–01–10 West Longitude, with a site restriction of 7.3 kilometers (4.5 miles) east of Valliant, Oklahoma.

DATES: Effective June 2, 2003.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–216, adopted April 17, 2003, and released April 18, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. Facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Valliant, Channel 234C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–10950 Filed 5–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–15067]

RIN 2127–AI71

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In May 2000, we published a rule to require advanced air bags in light vehicles. The requirements of that rule are being phased in during two stages, the first of which extends from September 1, 2003 to August 31, 2006. In September 2002, in response to petitions for rulemaking, we published a notice of proposed rulemaking (NPRM) to address two of the issues raised by petitioners. All other issues were denied. In January 2003, we issued a final rule that addressed the first of the remaining issues, namely the new phase-in requirements for vehicle manufacturers other than limited line manufacturers. This final rule addresses the issue of how to treat limited line manufacturers during the course of the first phase-in. We have decided to expand the definition of a limited line manufacturer to a manufacturer that produces no more than three vehicle lines. Additionally, NHTSA has decided to provide limited line manufacturers with an additional year to comply with the new advanced air bag requirements. Since the limited line manufacturer option is based on the premise that the manufacturer may need to use the option because it is unable to meet the phase-in requirement, no credit for early compliance will be allowed towards the 100 percent production requirement for the third year (*i.e.*, the final year for limited line manufacturers) of the phase-in.

DATES: *Effective Date:* The amendments made in this rule are effective July 7, 2003.

Petitions: Petitions for reconsideration must be received by June 19, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical issues: Mr. Louis Molino, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–2264, facsimile (202) 493–2739.

For legal issues: Ms. Rebecca MacPherson, Office of the Chief Counsel, NCC–112, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Porsche's Comments
III. Agency Decision
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I. Background

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00–7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection,* to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

The rule will be phased in during two stages. The first stage phase-in requires vehicle manufacturers to focus on minimizing the risk of air bag-related injury, particularly for children and small adults, while preserving the current level of protection. The second phase-in requires vehicle manufacturers to improve the current level of protection provided by air bags by conducting the belted barrier tests for the 50th percentile adult male dummy at a higher test speed.

During the first stage phase-in, from September 1, 2003 to August 31, 2006, increasing percentages of motor vehicles will be required to meet requirements for minimizing air bag risks, primarily by either automatically turning off the air bag when young children are present or deploying the air bag more benignly so that it is much less likely to cause serious or fatal injury to out-of-position occupants.[1]

As initially adopted, the rule would have required that the majority of vehicle manufacturers meet the following phase-in requirements: 9/1/03 to 8/31/04—35 percent; 9/1/04 to 8/31/05—65 percent; 9/1/05 to 9/1/06—100 percent, with manufacturers allowed to use credits for early compliance. Effective September 1, 2006, all vehicle manufacturers must comply with the phase-one requirements, regardless of whether they are subject to the phase-in; credits for early compliance are not permitted. As discussed in more detail below, the requirements for the first year of the phase-in has subsequently been changed to 20 percent. No changes have been made regarding the second and third years of the phase-in. Nor have any changes been made regarding the second phase-in, which commences September 1, 2007.

In the May 2000 final rule, limited line manufacturers, *i.e.*, those producing no more than two vehicle lines for sale in the United States, were offered the alternative of meeting the phase-in requirements or of opting out of the advanced air bag requirements for the first year of the phase-ins as long as 100 percent of the vehicles produced for the U.S. market were fully compliant in the second year of the phase-ins and thereafter. Final stage manufacturers of vehicles built in two or more stages, and manufacturers that produce no more than 5,000 vehicles per year globally were exempted from the phase-in requirements altogether.[2]

On August 19, 2002, Porsche submitted a petition for rulemaking, requesting changes to the limited line manufacturer alternative compliance schedule. Porsche currently produces two carlines for the U.S. market, the Boxster and the Carrera 911. However, it plans to introduce a third carline, the Cayenne, for model year 2004. Thus, Porsche will not be able to take advantage of the current limited line manufacturer exemption from the first year of the phase-ins. According to Porsche, small limited-line manufacturers have difficulties finding technology suppliers interested in providing the manufacturers with the systems needed to comply with the advanced air bag requirements. Porsche noted it was in a particularly unique position because it does not have a larger parent company that is willing to assume its production as part of its fleet for the purpose of meeting the phase-in schedule. Porsche requested the agency consider adding an additional ''carline'' definition specific to S14 of FMVSS No. 208 to provide manufacturers that sell two or fewer carlines in the U.S. the flexibility to comply at the 100 percent

[1] The rule also establishes very general performance requirements for dynamic automatic suppression systems (DASS) and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS.

[2] The criteria for small volume manufacturers was changed in a final rule published December 18, 2001 (66 FR 65376, Docket No. NHTSA–01–11110). A manufacturer now qualifies for the exemption from the phase-ins if it manufactures no more than 5,000 vehicles for the U.S. market per year.

level starting in the third year of the respective phase-ins.

At the time NHTSA received Porsche's petition, the agency had largely completed drafting a document responding to petitions for rulemaking from the Alliance of Automobile Manufacturers, Toyota, and DaimlerChrysler requesting several changes in the advanced air bag final rule, including a change to the first phase-in schedule. That document was published in the **Federal Register** on September 24, 2002 (67 FR 59800, Docket No. NHTSA 02–13393; Notice 1).

In that document, we proposed to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.,* from September 1, 2003 through August 31, 2004, from 35 percent to 20 percent. We stated that the proposed change reflected the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers had dropped plans to offer devices that suppress the passenger air bag when a child is present. We also stated that we had tentatively concluded that a reduction in the first year's phase-in requirement from 35 percent to 20 percent struck a reasonable balance between ensuring that the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested.

In light of our proposal to adjust the phase-in schedule, we decided to address the recently submitted Porsche petition and stated that we were considering possible adjustments in the alternative phase-in requirements available to limited line manufacturers. In that document, we stated that we believed the specific concerns cited by Porsche related more to its size than to the number of carlines it sells.

We otherwise denied the petitions or, as to certain requests, dismissed them because the agency had subsequently considered or was considering the same requests in the context of another rulemaking proceeding.[3] On January 31, 2003, NHTSA published a final rule adopting the new phase-in schedule as proposed (68 FR 4961, Docket No. NHTSA 03–14270). The sole remaining issue related to the September 2002 notice is Porsche's petition regarding limited line manufacturers.

II. Porsche's Comments

Porsche was the only party to comment on the issue of possible adjustments in the alternative phase-in requirements available to limited line manufacturers raised by NHTSA in the September 2002 NPRM. That company suggested a revised approach for addressing the issues it had raised in its petition. Porsche opined that it could be difficult to devise a FMVSS No. 208–specific definition of ''carline'' that would be easily enforceable and not overly-broad, a concern raised by NHTSA in the September, 2002 NPRM. Porsche also noted that it believed its problems with suppliers of advanced air bag technologies was more the result of its relatively small size than the fact that it produced a small number of carlines. Accordingly, Porsche proposed a new phase-in option based solely on a manufacturer's status as a relatively small, largely independent company and its production volume.

Porsche commented that its position among vehicle manufacturers is unique. According to Porsche, it is the only small independent car company selling more than a few hundred vehicles in the United States. Porsche's 2001 global production was approximately 56,000 units. Its next largest independent competitor is BMW, with annual sales of almost 1 million units. Porsche claimed that all other small manufacturers could either avoid the phase-in altogether because they produced less than 5,000 vehicles annually per year or because a larger, parent corporation owned sufficient interest in them as to allow them to phase-in their vehicles under the parent corporation. Thus, Porsche maintained, it was the only small company that would be required to meet the phase-in requirements.

Porsche urged NHTSA to adopt a new category of manufacturers who would be relieved of any responsibility to meet the new, advanced air bag requirements before September 1, 2006. The proposed category would apply to ''independent low volume manufacturers'' and would be based on worldwide production volume and manufacturer status. It recommended NHTSA limit the proposed category to manufacturers who produce no more than 100,000 vehicles per year and who are predominantly independent (*i.e.*, has less than 10% of its equity controlled by another manufacturer, a company owned by another manufacturer, or a manufacturer holding company).

III. Agency Decision

We have decided against the approach proffered by Porsche in its comments to the September 2002 NPRM. We believe such an approach effectively increases the size of a small volume manufacturer provided in FMVSS No. 208 by up to a factor of 20. Notwithstanding Porsche's relatively small size compared to other manufacturers, it is still substantially larger than those manufacturers for whom NHTSA determined compliance before the statutorily-mandated date would pose an unreasonable hardship. While we acknowledge that Porsche may have some difficulty engaging suppliers, we also note that the examples of supplier disinterest that were provided with the petition for rulemaking indicated that the disinterest was based, in part, on an unwillingness by Porsche to provide financial and design support.

Nevertheless, we have decided to provide relief that we believe is sufficient to address the legitimate concerns of a manufacturer that produces only a few carlines. Our original intent in providing a limited line manufacturer category was to accommodate the needs of those manufacturers who, because of the limited types of vehicles they produce, would have little or no design flexibility if required to meet the phase-in schedule applicable to other manufacturers. Certification of a single carline could result in a de facto phase-in requirement that far exceeded the one set for larger, more diverse manufacturers. This disparity is particularly great given the recent reduction in the phase-in percentage for the first year of the phase-in. If one assumes a roughly equal sales distribution among the two carlines originally contemplated by FMVSS No. 208, a limited line manufacturer would have to certify approximately 50% of its vehicles during the first year of the phase-in, while other manufacturers would only have to certify 20%. Given the reduction in phase-in percentages for larger, more diverse manufacturers, we believe it is appropriate to expand both the definition of and the limitations on limited line manufacturers.

First, we have decided to amend the definition of a limited line manufacturer for purposes of the first phase-in only, to a manufacturer that produces three or fewer carlines, as that term is defined in 49 CFR 583.4, for sale or distribution in the United States. NHTSA's initial decision to allow only two carlines to qualify as a limited line manufacturer was based on a desire to address the

[3] While some commenters objected to NHTSA's denial of other petitions, or certain requests within the petitions, no new petitions have been submitted and NHTSA's regulations do not require the agency to reconsider its denials of petitions. Accordingly, those issues were not further addressed in the January 2003 final rule and will not be addressed here.

needs of manufacturers of only a few carlines. Accordingly, we do not believe expanding the allowable number of carlines by one is inconsistent with the agency's initial intent.

Second, we have decided to exclude a limited line manufacturer from the first two years of the first phase-in, with full compliance required in the third year. Without this relief, a limited line manufacturer would have to achieve 100% compliance by the second year of the phase-in, a point at which other manufacturers need only certify 65% of their fleet. NHTSA has determined that this constitutes too great a burden for limited line manufacturers. Accordingly, we have decided it is appropriate to provide relief for the first two years of the phase-in, after which a limited line manufacturer would be required to ensure that each of its carlines is fully compliant.

Since the limited line manufacturer option is based on a premise that the manufacturer may need to use the option because it is unable to meet the newly relaxed phase-in requirements, no credits for early compliance will be allowed. NHTSA believes that such added relief is not justified, since a limited line manufacturer that was able to take advantage of early credits could probably comply with the relaxed phase-in requirements. As was the case previously, a limited line manufacturer may choose to meet the phase-in requirements applicable to other manufacturers and take advantage of early credits to meet the 100% compliance requirements for the third year.

NHTSA notes that the amended limited line manufacturer option is limited to the first advanced air bag phase-in. There is no reason to believe at this time that Porsche, or any other limited line manufacturer, will have trouble meeting the requirements of the second phase-in. We also note that two of Porsche's three carlines may be equipped with a manual air bag on-off switch under S4.5.4 of FMVSS No. 208. Should Porsche install such a switch, a responsible adult would be able to suppress the passenger air bag whenever a small child was seated in the passenger seat.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action is not ''significant'' under the Department of Transportation's regulatory policies and procedures.

This rule amends the limited line manufacturer option for the first advanced air bag phase-in. However, the rule does not change the requirements for vehicles equipped with advanced air bags. Readers who are interested in the costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment (FEA) for the May 2000 final rule. The estimated benefits compared to pre-model year 1998 (pre-depowered air bags) in that rule for the suppression technologies were estimated to be 93 fatalities and 151 AIS 3–5 injuries. These benefits can be considered to accrue over the 20–25 year lifetime of one model year's fleet. As noted in the NPRM, the reduction in the phase-in schedule for the model year 2004 fleet from 35 percent to 20 percent could result in the potential loss in benefits over the lifetime of the model year 2004 fleet of 14 lives and 23 AIS 3–5 injuries.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis was prepared for the May 2000 final rule as part of the FEA. This action will not have a significant economic impact on small businesses because the only change it makes to the May 2000 final rule is to reduce the percentage of vehicles that must comply with that rule during the first and second year of the phase-in. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this amendment should only slightly affect the price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform Act

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 more than $100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, the only effect of today's amendment will be to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Accordingly, this rule will not mandate any expenditure by State, local or tribal governments, or by the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This document does not establish any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising S14.1(b) to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

S14.1 Vehicles manufactured on or after September 1, 2003, and before September 1, 2006.

(b) Manufacturers that sell three or fewer carlines, as that term is defined at 49 CFR 585.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2005 shall meet the requirements specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

* * * * *

Issued: April 25, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–10945 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 68, No. 86

Monday, May 5, 2003

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–25]

Sander C. Perle, ICN Worldwide Dosimetry Service, Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated March 19, 2003, which was filed with the Commission by Sander C. Perle, Technical Director of ICN Worldwide Dosimetry Service. The petition was docketed by the NRC on March 26, 2003, and has been assigned Docket No. PRM–20–25. The petitioner requests that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology. The petitioner also requests that the definition of Individual monitoring devices (individual monitoring equipment) be revised to include ''electronic dosimeters, optically stimulated dosimeters'' as examples of certain devices.

DATES: Submit comments by July 21, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include ''PRM–20–25'' in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is the Technical Director of ICN Worldwide Dosimetry Service. According to the petitioner, ICN Worldwide Dosimetry Service processes approximately 5 million dosimeters annually (film, TLD and CR39).

The Petitioner's Request

The petitioner requests that the NRC amend its regulations in 10 CFR Part 20 to require that all dosimeters used to determine the radiation dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding receive personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology. The petitioner also requests that the definition of Individual monitoring devices (individual monitoring equipment) be revised to include ''electronic dosimeters'' and ''optically stimulated dosimeters'' as examples of certain devices for the assessment of dose equivalent or to comply with § 20.1202.

Justification for the Petition

The petitioner states that the current wording of § 20.1501(c) precludes the testing and accreditation requirements for an electronic dosimeter (currently excludes ''processed'' dosimeters). The petitioner states that today's electronic dosimeters use multiple microprocessors that include many complex user input parameters that ultimately affect the final dose and/or dose rate reported. The dose determined from an electronic dosimeter is a ''processed'' dose. The electronic dosimeter requires that the licensee program the dosimeter to respond to various spectra, based on the calibration and other licensee set parameters. According to the petitioner, the NRC's position is that because the current § 20.1501(c) doesn't appear to include the definition of an electronic dosimeter, nothing prohibits a licensee from using a an electronic dosimeter as a dose of record. He states that the NRC's philosophy is that the NRC onsite

inspector can assess the validity of the electronic dosimeter quality assurance program. The petitioner believes that the NVLAP onsite assessor is the most appropriate individual to assess a facility's quality assurance program, and to determine if the electronic dosimeter is capable of measuring and reporting accurate and precise dose results for workers in a specific radiation work environment, as they do for all other NVLAP accredited whole body dosimeters.

The petitioner states that the current wording of § 20.1501(c) precludes the testing and accreditation requirements for an extremity dosimeter (finger or wrist dosimeter). He states that because § 20.1201, Occupational dose limits for adults, specifies a dose limit, the annual limits to the extremities, which are a shallow dose equivalent of 50 rems (0.5 Sv) to the skin or to an extremity, it would seem logical that the dosimeter used to make this dose determination should be accredited through the same process as a whole body dosimeter. The petitioner states that NVLAP has accredited extremity dosimeters per Standard ANSI N13.32–1995, Performance Testing of Extremity Dosimeters for the past 8 years. The petitioner believes that there is no reason to continue excluding extremity dosimeters from requiring accreditation.

The petitioner notes that the NRC participated in an Electronic Dosimetry Workshop on October 14 -16, 1998 (Journal of Research of the National Institute of Standards and Technology, Volume 103, No. 4, July-August 1998). The petitioner states that the ''Conference Report'' (documenting that workshop) concludes that electronic dosimeters need to be measured by the same standard as the passive dosimeters currently in use and defines the electronic dosimeter as a processed dosimeter.

The petitioner presents the following as a summary of the Conference Report:

1. A search for consensus, among recommendations, and was intended to result in the broad acceptance of the electronic dosimeter for dose or record.
2. Ensure that the electronic dosimeter is measured by the same standard as the passive dosimeters currently in use.
3. This focused on defining the electronic dosimeter as a processed dosimeter in order to confirm that it fit the requirements of 10 CFR Part 20 for processed dosimeters.
4. It is clear that a process is used by the electric dosimeter to change from radiation energy deposited in the detector to a dose quantity representing risk to the worker.
5. The user has an important role in routine testing and/or calibration of the electronic dosimeters and this may be the point at which quality control activities (accreditation) should be addressed.

The petitioner believes that requiring NVLAP Accreditation of electronic dosimeters provides an unbiased third-party evaluation and recognition of performance, as well as expert technical guidance to upgrade laboratory performance. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems; personnel; accommodation and environment; test and calibration methods; equipment; measurement traceability; sampling; handling of test and calibration items; and test and calibration reports. NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data; it is solely a finding of laboratory competence.

The Petitioner's Suggested Changes

1. The definition for Individual monitoring devices (individual monitoring equipment) Is revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Individual monitoring devices (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent, used by licensees to comply with § 20.1201, such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, electronic dosimeters, optically stimulated dosimeters and person (''label'') air sampling devices.

* * * * *

2. Section 20.1501(c) is revised to read as follows:

§ 20.1501 General.

* * * * *

(c) All personnel dosimeters used to determine the radiation dose and that are used by licensees to comply with 10 CFR 20.1201, with other applicable provisions of this chapter, or with conditions specified in a license, must be processed and/or evaluated by a dosimetry processor.

* * * * *

The Petitioner's Conclusions

The petitioner states that when an occupationally exposed worker wears a dosimeter, the worker expects that the dosimeter will measure and report their dose as accurately and precisely as technically feasible. This requires that the dosimeter be capable of performing adequately in the radiation environment that the worker is exposed to. Therefore, a dosimeter must be able to respond adequately in varying radiation environments; *i.e.*, varying gamma, Beta, x-ray and neutron fields of varying dose rates and geometry. The petitioner states that requiring NVLAP accreditation assures the worker, the licensee, management, and the NRC (as well as state regulators) that the dosimeter worn performs as expected. NVLAP accreditation requires both the testing to varying radiation types, energies, dose range and angularity. NVLAP accreditation also provides onsite assessment of the entire Quality System. The petitioner believes that while NVLAP accreditation does not give 100 percent assurance that the licensee is performing to the best of its ability, it does provide a degree of assurance that any serious programmatic deficiencies that exist are documented and NVLAP follow-up is initiated to ensure that these deficiencies are corrected. The most appropriate entity to assess a dosimetry program is an NVLAP technical expert, not an NRC on-site inspector.

The petitioner states that the inspector can assess a dosimetry program, review the NVLAP report, and then take appropriate action to ensure that the licensee does comply with all requirements. Without these suggested amendments, there is no accredited testing performed for either extremity dosimeters or electronic dosimeters. There is no required onsite assessment by NVLAP. The petitioner believes that there is no standard that is required to be met. This does not serve the licensee well, and more importantly, leaves the workers with a dose that has no support from any recognized U.S. or international standard. The petitioner states that the NRC would be better prepared to stand behind a dose that is submitted as dose of record, and ultimately the dose recorded would stand a better chance of being accepted in the event of litigation. Litigation and valid dosimetry drives the American Nuclear Insurers (ANI) to require any nuclear power plant worker who is expected to exceed 100 mrem in a calendar year, to wear two dosimeters (independent technology) to demonstrate that the dose of record can be substantiated using these varying technologies. The validity of the dose assigned logically requires that whatever dosimeter is used to meet § 20.1201, it must meet recognized standards. The petitioner states that the NRC has stated this in many venues, most notably the Electronic Dosimetry Workshop, documented in the Conference Report, Electronic Dosimetry Workshop, Gaithersburg, MD,

October 14–16, 1998, Journal of Research of the National Institute of Standards and Technology, Volume 103, No. 4, July–August 1998. The petitioner believes that it is time for the NRC to implement the necessary changes to § 20.1501(c).

Dated at Rockville, Maryland, this 29th day of April 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–10967 Filed 5–2–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–FCVT–03–001]

RIN 1904–AA98

Alternative Fuel Transportation Program; Private and Local Government Fleet Determination; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking and public hearing; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of March 4, 2003, regarding the Private and Local Government Fleet Determination. This correction changes the room where the hearing will be held and also clarifies that the public hearing will begin at 9:30 a.m. and continue until 5 p.m. or until all public comments are received.

FOR FURTHER INFORMATION CONTACT: Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9171; e-mail: *regulatory_info@afdc.nrel.gov*.

Correction

In proposed rule FR Doc. 03–4991, appearing on page 10320, in the issue of Friday, March 4, 2003, the following corrections should be made:

1. On page 10320 in the **DATES** section, the second sentence is corrected to the following:

Oral views, data, and arguments may be presented at the public hearing, which will be held from 9:30 a.m. to 5 p.m., or until all comments are received, on May 7, 2003.

2. On page 10320 in the **DATES** section, the fourth sentence is corrected to the following:

The public hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Issued in Washington, DC, on April 30, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 03–10994 Filed 5–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Dart 528, 529, 529D, 531, 532, 535, 542, and 552 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines. This proposed AD would require removal of any Sermetel coating (Omat 7/46) from certain high pressure (HP) turbine discs and intermediate pressure (IP) turbine discs, and inspection of discs after coating removal. This proposed AD is prompted by reports of Sermetel coating (Omat 7/46) applied to certain turbine discs which, if allowed to remain on the discs would react adversely with the disc dry film lubricant, and could result in uncontained HP or IP turbine disc failure, resulting in possible damage to the airplane. The actions specified in this proposed AD are intended to prevent uncontained HP or IP turbine disc failure, which could result in damage to the airplane.

DATES: We must receive any comments on this proposed AD by July 7, 2003.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–10–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for

Germany, recently notified the FAA that an unsafe condition may exist on RRD Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542 –4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines. The LBA advises that some HP and IP turbine discs have had Sermetel coating (Omat 7/46) applied, in accordance with a local repair scheme, and also have dry film lubricant applied. This coating, when combined with the application of dry film lubricant, may have a detrimental effect on the discs leading to uncontained HP or IP turbine disc failure, which could result in damage to the airplane.

The dry film lubricant is graphite-based and in a typical corrosive environment, acts as an electrolyte when combined with Sermetel coating. This results in an accelerated form of corrosion pitting which could lead to initiation of cracks.

Relevant Service Information

RRD has issued Mandatory Service Bulletin No. Da72–540, dated December 23, 2002. This MSB describes procedures for determining if certain HP and IP turbine discs have Sermetel coating (Omat 7/46) combined with the application of a dry film lubricant and describes procedures for removing the coating and fully inspecting the discs once the coating is removed. The LBA classified this MSB as mandatory and issued airworthiness directive LTA 2003–015, dated February 6, 2003, in order to ensure the airworthiness of these RRD engines in Germany.

FAA's Determination and Requirements of the Proposed AD

These RRD Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines, manufactured in Germany, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require removal of any Sermetel coating (Omat 7/46) from certain HP turbine discs (except for engines with RRD Service Bulletin No. Da72–533, Revision 3, dated October 2001, incorporated) and IP turbine discs, and full inspection of discs after coating removal.

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

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

Costs of Compliance

There are approximately 1,400 RRD Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines of the affected design in the worldwide fleet. We estimate that 130 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 12 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts are not anticipated. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $93,600.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–10–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd & Co KG: Docket No. 2003–NE–10–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by July 7, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines with an HP turbine disc or IP turbine disc that has an SN listed in Table 1 of this AD installed. These engines are installed on, but not limited to, BAE Systems (Operations) Limited, Model HS 748 Series 2A and 2B airplanes, Fokker Aircraft B.V., F.27 Friendship Mark 200, 400, 500, and 600 airplanes, Gulfstream Aerospace Corporation Model G–159 ''Gulfstream I'' airplanes, Maryland Air Industries, Inc. F–7F, F–27A, F–27G, F–27J, F–27M, FH–227B, FH–227C, FH–227 D, and FH–227 E airplanes, and Mitsubishi Heavy Industries, Ltd Model YS–11, YS–11A–200, YS–11A–300, YS–11A–500, and YS–11A–600 airplanes. Table 1 follows:

TABLE 1.—AFFECTED TURBINE DISCS

Turbine disc serial No.	Turbine disc stage	Date when coating was applied	Turbine disc cycles-since-new when coating was applied
DETN128	HP	31. Mar 01	4356
DETN155	HP	22. Jun 99	0
DETN3541	HP	17. Apr 01	2850
DETN3542	HP	16. Jan 01	6053
LA759	HP	27. Oct 00	5858
LP219	HP	23. Nov 99	6688
LW376	HP	21. Jul 99	3302
LX484	HP	22. Feb 00	4632
LZ299	HP	23. Dec 99	5839
LZ404	HP	13. Jul 01	630
LZ555	HP	30. Aug 00	2158
LZ564	HP	15. Mar 01	4204
SG612	HP	20. Apr 00	5735
SH195	HP	16. Dec 99	5349
DETN25	IP	30. Aug 00	2158
DETN238	IP	31. Mar 01	4356
DETN240	IP	18. Apr 01	0
DETN944	IP	04. Mar 00	2200
DETN2666	IP	17. Apr 01	2850
DETN5538	IP	16. Jul 01	630
DETN6400	IP	14. Apr 99	0
LA407	IP	22. Jun 00	5736
LA858	IP	27. Oct 00	5858
LB99	IP	13. Aug 99	9093
LE284	IP	24. Dec 99	5679
LN87	IP	10. May 99	5829
LP519	IP	23. Nov 99	6688
LW517	IP	22. Dec 99	5865
LX214	IP	09. Dec 00	6498
LX379	IP	22. Feb 00	4632
LZ248	IP	23. Dec 99	5839
LZ385	IP	17. Oct 01	9072
LZ603	IP	22. Jun 99	0
SG554	IP	20. Apr 00	5735
SH863	IP	16. Dec 99	5349

Unsafe Condition

(d) This AD was prompted by reports of Sermetel coating (Omat 7/46) applied to certain turbine discs which, if allowed to remain on the discs would react adversely with the disc dry film lubricant, causing uncontained HP or IP turbine disc failure, which could result in damage to the airplane. The actions specified in this AD are intended to prevent HP or IP turbine disc failure, which could result in damage to the airplane.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Determining if Action Is Required

(f) Within 60 days after the effective date of this AD, determine the SN of the HP turbine disc and the IP turbine disc. If none of the HP and IP turbine discs with SN's listed in Table 1 are installed in the engine, no further action is required.

(g) If one or more of the discs with SNs listed in Table 1 of this AD are installed in the engine, do the following:

(1) If the engine has had a full overhaul of the turbine after the shop visit at which the Sermetel coating (Omat 7/46) was applied, no further action is required.

(2) If only the HP turbine disc is listed in Table 1, and the engine has RRD Service Bulletin No. Da72–533, Revision 3, dated October 2001, incorporated, no further action is required.

Removal of Sermetel Coating and Disc Inspection

(3) Before accumulating 10,000 flight cycles since the coating was applied, completely remove Sermetel coating (Omat 7/46) from HP turbine discs and LP turbine discs. Information on coating removal can be found in RRD Overhaul Processes Manual, Overhaul Process 114.

(4) Visually inspect HP turbine discs and LP turbine discs, and return to service discs that pass inspection. Information on disc pass or fail inspection criteria can be found in the RRD Engine Overhaul Manual, Chapter 72–6–1.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office.

Material Incorporated by Reference

(i) None.

Related Information

(j) The subject of this AD is addressed in LBA airworthiness directive LTA 2003–015, dated February 6, 2003.

Issued in Burlington, Massachusetts, on April 29, 2003.

Francis A. Favara,

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

[FR Doc. 03–10984 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14656; Airspace Docket No. 03–ACE–25]

Proposed Establishment of Class E Airspace; Brookfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Brookfield, MO. The FAA has developed Standard Instrument Approach Procedures (SIAPs) to serve the North Central Missouri Regional Airport, Brookfield, MO. Controlled airspace is needed to accommodate the SIAPs.

The intended effect of this proposal is to provide controlled Class E airspace for aircraft executing the SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14656/ Airspace Docket No. 03–ACE–25, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14656/Airspace Docket No. 03–ACE–25.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing a Class E airspace area at Brookfield, MO. The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 18, ORIGINAL SIAP and an RNVA (GPS) RWY 36, ORIGINAL SIAP to serve North Central Missouri Regional Airport, Brookfield, MO. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Brookfield, MO

North Central Missouri Regional Airport, MO
(Lat. 39°46′12″N., long. 93°00′46″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of North Central Missouri Regional Airport.

* * * * *

Issued in Kansas City, MO, on April 23, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11031 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14855; Airspace Docket No. 03–AAL–4]

Proposed Establishment of Class E Airspace; Pilot Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Pilot Point, AK. Two new Standard Instrument Approach Procedures (SIAP) and one new Departure Procedure are being published for the Pilot Point Airport. There is no existing Class E airspace at Pilot Point. Adoption of this proposal would result in the establishment of 700 ft. and 1,200 ft. Class E airspace at Pilot Point, AK.

DATES: Comments must be received on or before June 19, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14855/Airspace Docket No. 03–AAL–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14855/Airspace Docket No. 03–AAL–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Pilot Point, AK. The intended effect of this proposal is to establish Class E airspace, from 700 feet and 1,200 feet above the surface, to contain Instrument Flight Rules (IFR) operations at Pilot Point, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Pilot Point Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 25, original; and (2) RNAV (GPS) Runway 7, original. The Zilko One RNAV Departure, a new Departure Procedure to permit IFR traffic to depart Runway 7 and Runway 23, will also be established. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Pilot Point Airport and additional Class E controlled airspace extending upward from 1,200 feet above the surface would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Pilot Point Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Pilot Point, AK [New]

Pilot Point Airport, AK

(Lat. 57°34′49″ N., long. 157°34′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Pilot Point Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 57°51′00″ N. long. 158°03′00″ W., to lat. 57°51′00″ N. long. 157°05′00″ W., to lat. 57°24′45″ N. long. 157°05′00″ W., to lat. 57°24′45″ N. long. 158°03′00″ W., to the point of beginning.

* * * * *

Issued in Anchorage, AK, on April 18, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–11023 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14856; Airspace Docket No. 03–AAL–6]

Proposed Establishment of Class E Airspace; Igiugig, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Igiugig, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Igiugig Airport. There is no existing Class E airspace at Igiugig. Adoption of this proposal would result in the establishment of 700 ft. Class E airspace at Igiugig, AK.

DATES: Comments must be received on or before June 19, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001.

You must identify the docket number FAA–2003–14856/Airspace Docket No. 03–AAL–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14856/Airspace Docket No. 03–AAL–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Igiugig, AK. The intended effect of this proposal is to establish Class E airspace, from 700 feet above the surface, to contain Instrument Flight Rules (IFR) operations at Igiugig, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Igiugig Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 5, original; and (2) RNAV (GPS) Runway 23, original. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Igiugig Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Igiugig Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Igiugig, AK [New]

Igiugig Airport, AK

(Lat. 59°19′27″ N., long. 155°54′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Igiugig Airport.

* * * * *

Issued in Anchorage, AK, on April 18, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–11024 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14854; Airspace Docket No. 03–AAL–5]

Proposed Establishment of Class E Airspace; Nelson Lagoon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Nelson Lagoon, AK. Two new Standard Instrument Approach Procedures (SIAP) and one new Departure Procedure are being published for the Nelson Lagoon Airport. There is no existing Class E airspace at Nelson Lagoon. Adoption of this proposal would result in the establishment of 700 ft. Class E airspace at Nelson Lagoon, AK.

DATES: Comments must be received on or before June 19, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14854/ Airspace Docket No. 0–AAL–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket No. FAA–2003–14854/Airspace Docket No. 03–AAL–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Nelson Lagoon, AK. The intended effect of this proposal is to establish Class E airspace, from 700 feet above the surface, to contain Instrument Flight Rules (IFR) operations at Nelson Lagoon, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Nelson Lagoon Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 8, original; and (2) RNAV (GPS) Runway 26, original. The Binal One RNAV Departure, a new Departure Procedure to permit IFR traffic to depart Runway 8 and Runway 26, will also be established. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Nelson Lagoon Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Nelson Lagoon Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 600 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nelson lagoon, AK [New]

Nelson Lagoon Airport, AK
(lat. 56°00′27″ N., long. 161°09′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Nelson Lagoon Airport.

* * * * *

Issued in Anchorage, AK, on April 18, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–11025 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD27

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary (OST) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would adjust the amount of compensation available to two classes of carriers under the Air Transportation Safety and System Stabilization Act. The effect of the change would be to permit increased compensation for some small air carriers.

DATES: Comments on the subject of this proposed rule must be received on or before May 19, 2003.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST–2001–10885, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for

inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/.* Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

You may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act.

Under section 101(a)(2)(A)–(B) of the Stabilization Act, a total of $5 billion in compensation is provided for ''direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.''

Section 103 of the Stabilization Act established the basis for determining the amount of compensation payable to each carrier. Under section 103(b), that amount, for each passenger and combination passenger-cargo carrier, was the lesser of (1) the amount of its direct and incremental losses, or (2) the product of $4.5 billion and the ratio of the number of available seat miles reported for the month of August 2001 by the particular carrier to the number of available seat miles of all such air carriers reported for that month.

Thereafter, a number of carriers expressed concern that the Stabilization Act's use of approximate market share ratios as one of the alternate tests for compensation—*i.e.*, measuring each carrier's available seat miles (ASMs) against the total number of industry ASMs—would not adequately compensate some classes of carriers for their losses. Since ASMs are the product of the number of seats available for revenue use and the miles they are flown, 14 CFR 330.3, these carriers pointed out that those who operate aircraft having relatively few seats and/or fly for relatively short distances, such as air ambulances and air tour operators, do not accumulate ASMs as quickly as carriers operating large aircraft and flying longer distances. They argued that an ASM ratio formula, if used as a ceiling for compensation, would place such carriers at a disadvantage to larger carriers and result in compensation payments that were well below the losses these carriers had sustained from the attacks.

Subsequently, Congress enacted Section 124(d) of the Aviation and Transportation Security Act (Pub. L. 107–71, Nov. 19, 2001), which amended section 103 of the Stabilization Act. The purpose of this amendment, according to the Conference Report (H.R. REP. No. 107–296 at 79), was ''to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry-wide losses.'' The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) SET–ASIDE.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,000,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

On January 2, 2002 (67 FR 263), the Department requested comments concerning whether it should utilize this discretionary authority to set-aside of a portion of funds, and if so, in what manner and to what classes of air carriers. Following receipt and consideration of written comments, the Department determined that the statutory formula in the Stabilization Act did result in disproportionately smaller recoveries for smaller passenger carriers, and that it would be appropriate to use the set-aside authority to address that situation. In analyzing the financial information submitted to that point by smaller carriers, the Department found that air taxi, commuter, and regional carriers reporting fewer than 10 million ASMs would receive disproportionately less relative to their losses under the Stabilization Act formula than carriers that had higher ASM levels. Moreover, the smallest of these—those who reported an average of 10,000 or fewer per day, or 310,000 for the reporting period of August 2001—seemed to fall even further behind in compensation levels relative to their expected losses.

Therefore, in its final rule on the subject (67 FR 18468–78, April 16, 2002) the Department established a set-aside program and created two classes of small carrier for purposes of prospective compensation under that program. A Class I air carrier was defined as an air taxi, regional, or commuter air carrier that reported 310,000 or fewer available seat miles to the Department for the month of August 2001. A Class II air carrier was defined as an air taxi, regional, or commuter air carrier that reported between 310,001 and 10 million available seat miles to the Department for that month. 67 FR 18477, codified at 14 CFR 330.43. (Indirect carriers reporting 310,000 or fewer, and from 310,001 to 10 million ASMs, were added to these two classes in a final rule published on August 20, 2002, 67 FR 54058–83.) The rule further stated that compensation for Class I carriers would be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation. Compensation for Class II carriers would be calculated using a graduated ASM rate equivalent to (i) the mean loss per ASM for all Class I carriers applying for compensation, for each of the first 310,000 ASMs reported and (ii) the mean loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 310,000. 67 FR 18478, codified at 14 CFR 330.45(b).

Another subsection of the regulation set a ''floor'' for payment to qualifying set-aside carriers, equivalent to 25% of their direct and incremental transportation-related losses, to ensure that even air carriers with very high loss/ASM ratios would receive compensation at a rate more consistent with those being paid to larger carriers having high loss/ASM ratios. A further

provision was necessary to ensure that carriers under the set-aside would not receive a higher percentage of compensation for losses, on average, than non set-aside carriers. Thus, we provided that compensation for set-aside carriers would not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination passenger-cargo air carriers that were not eligible for the set-aside funds. Finally, we provided that if a set-aside carrier would receive more compensation under the Stabilization Act formula than under the set-aside formula, it would receive compensation at the higher amount. 14 CFR 330.35(c).

Important to these calculations are, of course, the amounts that represented the mean losses per ASM for Class I and Class II carriers. In the Preamble to the April rule, the Department made clear that these amounts could be calculated only after all applications had been received from Class I and II carriers, and only after the amounts of actual losses could be verified. However, for purposes of illustration, the Department offered estimates of the basis upon which each Class would be compensated, relying upon the forecasted losses made by the air carriers that had already applied and would qualify for Class I and Class II. As an example, for Class I carriers, the Department estimated that the mean loss per ASM was $0.82, based upon this preliminary data. Thus, for Class I carriers, the Department projected that a carrier with 100,000 ASMs might receive $82,000 in total compensation if this formula were used. For Class II carriers, the average losses might be expected to be in the range of 25 to 50 cents per ASM, but to achieve consistency with the compensation rates for the Class I carriers this amount would need to be averaged over the first 310,000 ASMs and those between 310,000 and 10 million. The Department projected that if the $0.82 per ASM rate were used for the initial 310,000 ASMs, the overall mean, based on these forecast data, would be reached by applying a rate of $0.19 per ASM for those over the first 310,000 ASMs. As an example, we estimated that a carrier with 750,000 ASMs might receive approximately $337,800 in total compensation under this formula. Again, we cautioned that these were estimates, and that, depending on the actual losses and ASMs that would be validated for set-aside applicants, the ASM rates for both Class I and Class II carriers could change. *See* 67 FR 18470.

The Department has now received and processed the carrier applications under the set-aside program. We have determined that the losses incurred by Class I carriers were significantly lower than our earlier estimates, averaging only $0.42 per ASM. This was primarily due to carriers reporting actual losses lower than they had forecast earlier, although disallowance of some claimed losses also played a part. Losses for Class II carriers, on the other hand, were more consistent with earlier estimates, ranging generally from 25 to 32 cents per ASM. We also found that the smallest carriers in Class I, those reporting fewer than 75,000 ASMs, reported losses that were on average significantly higher per ASM than the larger carriers in Class I.

As a result, air carriers in Class I have been processed for payments in amounts that are often less than anticipated. Also, the smallest of the carriers, because they have, on average, reported comparatively higher losses per ASM than other set-aside eligible carriers, still seem to have received disproportionately smaller amounts relative to those other carriers. On the other hand, because the verified loss amounts on a cumulative basis have been less than those we estimated, the Department has flexibility to modify the set-aside rule to provide more equitable treatment for the smaller set-aside carriers without disadvantaging the larger ones.

We are, therefore, considering changes to the definitions for the two classes of set-aside air carrier in 14 CFR 330.43. Class I would now consist of those carriers reporting 75,000 or fewer ASMs to the Department for the month of August 2001, while Class II would consist of those reporting between 75,001 and 10 million ASMs for that month. The set-aside formula for Class I carriers would be based on a mean ASM rate for that class of $0.984 per ASM. The formula for Class II carriers would be based on the rate of $0.984 for each of the first 75,000 ASMs, and $0.24 for each ASM from 75,001 to 10 million. Use of these mean ASM rates would not reduce the payments any set-aside carrier has received. They would increase the maximum possible payment for set-aside carriers that reported 310,000 or fewer ASMs, but, primarily, would increase payments to the smallest carriers in that group.

To illustrate the effects of this change, the following table shows the approximate maximum payments that three fictional carriers would receive under both the preexisting and the proposed mean ASM rates and class definitions:

Carrier	ASMS in August 2001	Maximum compensation under April 16 rule	Maximum compensation under amended rule
ABC Airways	60,000	$25,200	$59,040
DEF Airways	250,000	105,000	115,800
GHI Airways	5,000,000	1,255,800	1,255,800

In addition to use of this formula for compensation, the Department may utilize several other alternatives as bases for compensation of set-aside carriers. These other alternatives are currently available under 14 CFR 330.45(c), and no change is being made to that subsection. Thus, the compensation paid to qualifying set-aside carriers will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses that they demonstrate to the satisfaction of the Department were incurred as result of the terrorist attacks. This would ensure that there would be a ''floor'' of compensation at the 25 percent level available for extreme cases of loss.

In that same subsection, the Department had set a ceiling rate for compensation to ensure that set-aside carriers are not compensated at levels that would be excessive relative to other carriers. Passenger and combination passenger-cargo air carriers that were not eligible for the set-aside have received compensation computed at a mean of 71 percent of their losses. Accordingly, the Department would compensate set-aside carriers at that level if the amount that would be received is less than that computed under the set-aside formula.

Finally, the Department has noted that, in some unusual circumstances, the ASM-based formula established originally under the Stabilization Act would provide a greater level of compensation to a set-aside carrier than the 71 percent calculation based on the mean level of compensation for non set-aside carriers noted above. Because Congress afforded discretion to the Department in the Security Act to assist, not disadvantage, smaller carriers, we would provide compensation in this case based on the Stabilization Act formula, up to, but not to exceed, compensation for all air transportation-related losses.

Regulatory Analyses and Notices

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include approximately 50 small air carriers. The Department certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule will increase payouts to such a limited number of small air carriers. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

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 Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

Comment Period

The Department has shortened the comment period for this rule for good cause pursuant to 5 U.S.C. 553 (d)(3). First, this proposal will benefit a number of carriers by providing additional funds. Second, the shortened comment period will allow the Department to finalize the rule expeditiously, which will permit final payments to be made to these carriers sooner.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—Transportation, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 330 as follows:

PART 330—[AMENDED]

1. The authority citation for 14 CFR part 330 continues to read as follows:

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 155 Stat. 631 (49 U.S.C. 40101 note).

2. Revise § 330.43 (a) and (b) as follows:

§ 330.43 What classes of air carriers are eligible under the set-aside?

* * * * *

(a) You are a Class I air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported 75,000 or fewer ASMs to the Department for the month of August, 2001.

(b) You are a Class II air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported between 75,001 and 10 million ASMs to the Department for the month of August 2001.

3. Revise § 330.45 (b)(2) (i) and (ii) as follows:

§ 330.45 What is the basis on which air carriers will be compensated under the set-aside?

* * * * *

(b) * * *

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to —

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 75,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 75,000.

* * * * *

Issued in Washington, DC, this 1st day of May, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–11185 Filed 5–1–03; 2:38 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket Nos. 02N–0275 and 02N–0277]

Proposed Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; satellite downlink public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of April 8, 2003 (68 FR 16998). The document announced a public meeting (via satellite downlink) to discuss the proposed regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) regarding maintenance and inspection of records for foods (Docket No. 02N–0277) and administrative detention (Docket No. 02N–0275). The document was published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Louis Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: CFSAN-SS@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION: In the FR Doc. 03–8576, appearing on page 16999 in the **Federal Register** of Tuesday, April 8, 2003, the following corrections are made:

1. On page 16999, beginning in the second column and ending in the third column, under table 1, under ''Pre-event Test:'' the last sentence is corrected to

read ''This is a test of Galaxy 9, Transponder 23 only.''

2. On page 16999, in the first column of the U.S. C-band settings chart, the U.S. transponder number ''3'' is corrected to read ''23''.

3. On page 16999, in the second column of the U.S. C-band settings chart, the U.S. polarization ''Vertical'' is corrected to read ''Horizontal''.

4. On page 16999, in the third column of the U.S. C-band settings chart, the U.S. channel number ''3'' is corrected to read ''23''.

5. On page 16999, in the fourth column of the U.S. C-band settings chart, the U.S. downlink frequency ''3760 MHz'' is corrected to read ''4160 MHz''.

Dated: April 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10933 Filed 5–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

Proposed Membership of the Negotiated Rulemaking Committee Under Section 1138 of the No Child Left Behind Act of 2001

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed membership of negotiated rulemaking committee.

SUMMARY: As required by the Negotiated Rulemaking Act, the Secretary of the Interior has selected the proposed members of a committee to develop recommendations for proposed rules for Indian education under six sections of The No Child Left Behind Act of 2001. As required by Section 1138 of the No Child Left Behind Act of 2001, representatives of tribal and tribally-controlled schools [Tribes with Bureau-funded schools] were invited to nominate tribal representatives to serve on the committee. After considering nominations, the Secretary proposes to appoint the persons named in this notice as tribal committee members. Tribes, tribal organizations, and individual tribal members may submit comments on the proposed tribal committee membership, apply for tribal membership on the committee, or submit other nominations for tribal membership on the committee. The Secretary also proposes to appoint Federal representatives to the committee, as listed.

DATES: Comments on the proposed tribal members of this negotiated rulemaking committee must be received no later than June 4, 2003.

ADDRESSES: Send nominations and comments to Starr Penland, Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, MS–3512–MIB, 1849 C Street NW., Washington, DC 20240, or by fax to 202–273–0030. Comments that we receive will be available for inspection at the address listed above from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, Office of the Southwest Regional Solicitor, 505 Marquette Avenue, Suite 1800, Albuquerque, New Mexico, or by telephone at (505) 248–5605. We will post additional information as it becomes available on the Office of Indian Education Programs Web site at *http//www.oiep.bia.edu.*

SUPPLEMENTARY INFORMATION: Section 1138 of The No Child Left Behind Act of 2001 (Pub. L. 107–110) requires the Secretary to follow a negotiated rulemaking process to issue regulations under six sections of the Act. (These sections are: 1116(g), 1124, 1127, 1130, 1136, and 1043.) Section 1138 of the Act requires that in establishing this committee, the Secretary must follow the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that:

(1) Reflects the unique government-to-government relationship between the Indian tribes and the United States;

(2) Ensures that the membership of the committee includes only representatives of the Federal Government and of tribes; and

(3) To the extent possible, allots tribal representation based upon the tribes' proportionate share of the total enrollment in BIA schools.

We conducted 14 regional consultation meetings in August and September 2002 to obtain guidance on the proposed rulemaking. Through the meetings and through comments we received, we identified interests that would be significantly affected by the final rule. In selecting committee members, the Secretary has considered these interests.

The Secretary has determined that the proper functioning of the committee requires that the committee be limited to no more than the 25 members recommended by the Negotiated Rulemaking Act (5 U.S.C. 565). The Secretary has selected 19 tribal representatives and 6 Federal representatives for the committee, for a proposed total of 25 members.

The Secretary finds that the proposed tribal representatives for the committee:

(1) Represent a balance of interests that will be significantly affected by the final rules (*i.e.,* parents; teachers; school board members; and administrators of tribal and tribally operated contract day schools, grant day schools, grant boarding schools, and peripheral dormitories);

(2) Proportionately represent students from tribes served by Bureau-funded schools;

(3) Reflect the different varieties of school size, type of school and facility, and geographical location; and

(4) Have been selected using a process that considers the nominees' experience and expertise in Indian education and outstanding achievements or special skills.

The first meeting of the committee is tentatively scheduled for June 2003, in Albuquerque, New Mexico. We will post further information on the first meeting of the committee on our Web site at *http//www.oiep.bia.edu.*

Proposed Tribal Committee Members

The Secretary proposes the following tribal representatives for the negotiated rulemaking committee:

Nominee	Tribal affiliation	Educational affiliation
Greg Anderson	Muscogee (Creek) Nation	Administrator, Creek Nation-Eufaula Dormitory.
Lorraine Begay	Navajo Nation	Director, Business Services, Greasewood Springs Community School, Inc.
Pauleen Billie	Navajo Nation	Executive Director, Navajo Area School Board Association.
Faye Blue Eyes	Navajo Nation	Director of Support Services, Shiprock Alternative Schools, Inc.
Roger Bordeaux	Potowatomi Nation	Superintendent of Tiospa Zina Tribal School.
Deborah Bordeaux	Oglala Sioux Tribe	Principal, Loneman School.
Doyce Cannon	Eastern Band of Cherokee Indians	Director of Education, Cherokee Central Schools.
Mary Helen Creamer	Navajo Nation	Program Manager, Tribal Education Department.

Nominee	Tribal affiliation	Educational affiliation
Laverne Dallas	Hopi Tribe	President, Hopi School Board.
Zachary Ducheneaux	Cheyenne River Sioux Tribe	District 6 Representative, Cheyenne River Sioux Tribal Council.
Gus Kenne, Jr	Navajo Nation	Director of Education, Pine Hill School.
David Germany	Mississippi Band of Choctaw	Education Planner, Choctaw Tribal School System.
Anthony (Tony) Pivec	Cherokee Nation	Superintendent, Sequoyah High School.
Dolores McKerry	Navajo Nation	Program Manager for North Central Association.
Waye Newell	Pasamaquoddy Tribe	Director of Culture and Bilingual Education.
Mark Sorenson	Navajo Nation	Executive Director of Little Singer Community School.
Terry Yellow Fat	Standing Rock Sioux Tribe	Superintendent, Standing Rock Community School.
Wayne Waddoups	Shoshone-Bannock	Superintendent, Shoshone Bannock School District # 512.
Linda Warner	Comanche Nation	Chief Executive Officer, Indian Community School of Milwaukee.

Proposed Federal Committee Members

The Secretary proposes the following Federal representatives for the negotiated rulemaking committee:

Name	Affiliation
Theresa Rosier	Office of the Assistant Secretary-Indian Affairs.
Sharon Wells	Special Assistant to the Deputy Director, School Operations, BIA.
Edith Blackwell	Associate Solicitor, Division of Indian Affairs, Office of the Solicitor.
Bruce Steele	Principal of Polacca Day School, DIA–OIEP–Hopi Agency.
Michael Rossetti	Counselor to the Secretary of the Interior.
Larry Byers	Acting School Supervisor of Chemawa Indian School, BIA–OIEP–Portland Agency.

If you are a tribe with Bureau-funded schools, an Indian education organization, or an interested individual, we invite you to comment on the nominations in this notice or to nominate other persons (or yourself) for membership on the committee. Any nomination you submit must include all of the following:

(1) The nominee's name, title, business address, telephone number and fax number;

(2) The nominee's resume reflecting experience and expertise in Indian education issues;

(3) The interest(s) to be represented by the nominee (based on the interests listed above);

(4) Evidence that the nominee is authorized to represent the tribal interest(s) the nominee is proposed to represent;

(5) The reasons that the proposed members of the committee identified in this notice do not represent the interest(s) you identify in item (3); and

(6) Your name, address, telephone number, and tribe or tribal organization.

We will consider only comments and nominations that we receive by the close of business on June 4, 2003, at the location indicated in the **ADDRESSES** section of this notice.

Dated: May 1, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–11167 Filed 5–1–03; 2:54 pm]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100420–03]

RIN 1545–BB90

Safe Harbor for Satisfying Statutory Requirements for Valuation under Section 475 for Certain Securities and Commodities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document describes and explains a possible framework for a safe harbor (including recordkeeping and record retention requirements) that would satisfy the statutory requirement to value certain securities and commodities under section 475 of the Internal Revenue Code. This document also invites comments from the public on this safe harbor and other alternative valuation methodologies. All materials submitted will be available for public inspection and copying.

DATES: Written or electronic comments must be submitted by August 4, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–100420–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–100420–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622–7180; concerning the proposals, Marsha Sabin or John W. Rogers III (202) 622–3950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

A. Overview

Section 475(a) requires dealers in securities to mark their securities to market. If a security is inventory, it must be included in inventory at its fair market value. If a security is not inventory and is held at the end of the taxable year, it must be treated as if it were sold for its fair market value on the last business day of the taxable year. Mark-to-market treatment is available on an elective basis to commodities dealers and to traders in securities or commodities. *See* sections 475(e) and (f).

Although the meaning of the term ''fair market value'' has long been established, it has been difficult for both taxpayers and the IRS to determine fair market value in certain situations. To reduce the administrative burden on

taxpayers and the IRS of determining fair market value under section 475, the IRS and the Treasury Department are considering the publication of a notice of proposed rulemaking that, by allowing values used on a financial statement to be used on the tax return, would provide an elective safe harbor for satisfying the statutory requirement to value securities and commodities.

Three broad principles guide eligibility for the safe harbor. First, any mark-to-market methodology used on a financial statement submitted for financial reporting purposes would have to be sufficiently consistent with the mark-to-market methodology used under section 475. Second, the financial statement would have to be one for which the taxpayer has a strong incentive to report values fairly. Third, if requested, the taxpayer would have to timely provide the IRS with the information and documents necessary to verify the relationship between the values reported on the financial statement and the values used for purposes of section 475.

B. Principle One: Mark-to-Market Methodology for Financial Reporting

To qualify for the safe harbor, a mark-to-market methodology used for financial reporting should be sufficiently consistent with the requirements of a mark-to-market methodology used for section 475. Under section 475, a mark-to-market methodology must (i) value securities and commodities as of the last business day of each taxable year, (ii) recognize into income the gains and losses arising from changes in value each year, and (iii) compute gain or loss on disposition by reference to the value at the end of the prior year. To the extent that mark-to-market methodologies for financial reporting and section 475 differ, the IRS and the Treasury Department request comments identifying the differences and addressing whether and how the differences should affect the safe harbor.

The valuation standard under section 475 is fair market value, the price at which property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The IRS and the Treasury Department are considering whether to use the fair value standard under U.S. Generally Accepted Accounting Principles (''GAAP'') as a proxy for the fair market value standard required for tax purposes. In particular, the IRS and the Treasury Department seek comments on whether GAAP permits (i) valuation of securities at the bid price, (ii) downward adjustments from mid-market values for future administrative, hedging, or financing expenses, or (iii) one or more redundant downward adjustments from mid-market values for credit risk. (In other words, if future cash flows are discounted to present value using a rate, such as LIBOR (London Interbank Offered Rate), that corresponds to the credit quality of the counterparty, is there a need for any additional credit adjustment?)

The IRS and the Treasury Department are interested in receiving information on the types of adjustments that are currently used for financial statement purposes and an explanation of these adjustments. Comments are requested on the Financial Accounting Standards Board's consideration of fair value reporting of derivatives and the valuation of projected cash flows and any impact that has on how taxpayers are reporting any valuation adjustments for fair value purposes.

C. Principle Two: Financial Statements and Business Use

Two factors are relevant in establishing that the taxpayer has a strong incentive to report values of the securities and commodities fairly on the financial statement: (i) reporting of values on a financial statement; and (ii) significant use of those reported values in the taxpayer's business.

As to the reporting of values, the IRS and the Treasury Department are considering various types of financial statements for the safe harbor. Three classes of financial statements under consideration are:

(1) A financial statement required to be filed with the Securities and Exchange Commission (''SEC'') (the 10–K or the Annual Statement to Shareholders);

(2) A financial statement required to be provided to the Federal government or any of its agencies (other than the SEC or the IRS); and

(3) A certified audited financial statement not required to be filed with the SEC or another Federal agency.

In certain limited circumstances, it may also be appropriate to consider financial statements required to be filed with a state government or any of its agencies, a political subdivision of a state, or possibly a foreign regulator.

It may also be relevant whether a statement is provided to equity holders or creditors.

Comments are requested on the extent to which each of these various classes of financial statements is appropriate for the safe harbor and whether any other classes of financial statements may be as well.

As to significant use of reported values in the taxpayer's business, potentially significant uses include guiding the taxpayer's pricing and risk management decisions and determining employee compensation.

Special considerations arise if securities or commodities are held by a party related to the issuer or if derivatives in securities or commodities (including forward contracts in cash markets) exist between related parties. Financial consolidation can cause these securities or commodities (including derivatives) to be either eliminated (because of netting) or incompletely reported on financial statements. Additionally, in certain circumstances, these related party transactions may not receive the same level of regulatory scrutiny. It is not clear, therefore, whether the safe harbor would be appropriate for securities or commodities held by a party related to the issuer or for derivatives in securities or commodities that exist between related parties.

D. Principle Three: Recordkeeping and Record Production

Under the safe harbor, examinations of returns would focus on how the values used in the financial statements relate to gain and loss on the tax returns. Consequently, records would have to clearly show: (1) That the same value used on the financial statement was used on the tax return; (2) that no security subject to section 475 and reported under the required methodology on the financial statement was excluded in the application of the safe harbor; and (3) that only securities or commodities subject to section 475 had been carried over to the tax return under the safe harbor.

Given the complexity of the business operations of many taxpayers, comparing a single line on the financial statement to a single line on the tax return will not suffice to verify that the same value used for the financial statement was used on the tax return. Therefore, a safe harbor will impose specific verification and reconciliation requirements.

The IRS and the Treasury Department are concerned about valuation issues that may arise from pooling of securities and commodities. Comments are requested on how securities and commodities are pooled for purposes of financial reporting, how they are pooled for tax reporting, and how the Commissioner can verify the basis determination of a single position contained in the pool if that position is sold or settled in the year following the

mark and other positions in the pool are not sold.

The IRS and the Treasury Department are similarly concerned about the consolidation and de-consolidation of the business structure. Comments are requested on the impact of the consolidation and de-consolidation on determining whether the same securities and commodities will be reflected on both the financial statement and the tax return.

The IRS and the Treasury Department are considering rules that would require electing taxpayers to maintain and, if requested, provide to the Commissioner in a timely manner the following records: (1) Books and records clearly establishing that the values used in determining gain or loss under section 475(a) for eligible securities or commodities were the values used in the financial statement; (2) for taxpayers filing a Form 1120, a reconciliation of the amount of net income reported on the financial statement to the amount reported on line 1 of the Schedule M–1 on the Form 1120, Corporate Income Tax Return; and (3) for other taxpayers, a similar reconciliation schedule. The documents for reconciliation purposes include supporting schedules, exhibits, computer programs used in producing the values and schedules, and documentation of rules and procedures governing determination of the values. Books and records would include all those that are required to be maintained for financial or regulatory reporting purposes, even if those books and records are not specifically covered by section 6001. Comments are requested on whether less burdensome recordkeeping requirements could be developed that would still allow for effective verification of conformity.

The IRS and the Treasury Department are considering situations in which the Commissioner should enter into agreements with specific taxpayers establishing which records would have to be maintained, how the records would have to be maintained, and how long the records would have to be retained. Because an agreement would be tailored to a particular taxpayer's operations and environment, it is expected that an agreement would arise only after individual negotiations. Although no taxpayer would be entitled to an agreement, an agreement based on an early understanding of a taxpayer's operations would be in the best interests of tax administration and, therefore, would be encouraged.

E. Eligible Taxpayers

The safe harbor is being considered for dealers in securities under section 475(c)(1). Whether the safe harbor would also be extended to securities traders, dealers in commodities, and commodities traders would largely depend on whether the extension would comport with the principles described in the Overview.

F. Eligible Securities and Commodities

Section 475 applies to a wide variety of securities and commodities. It is relatively easy for both taxpayers and the IRS to determine the fair market value of positions for which pricing information is readily available, such as most actively traded personal property. The need for a safe harbor is most pressing for positions for which pricing information is not readily available, including more complex notional principal contracts and derivative instruments, and hedges described in sections 475(c)(2)(D), (E), and (F). Comments are requested on what securities should be included in the safe harbor.

Commodities raise problems similar to those for securities, so the need for a safe harbor is similarly pressing for commodities (including commodities derivatives) for which pricing information is not readily available. Comments are requested addressing application of a safe harbor for commodities.

G. Comments on Other Valuation Methodologies and Safe Harbors

Comments are requested on whether there are other methodologies for determining fair market values under section 475. Comments are also requested on whether other safe harbors could act as proxies for fair market value under section 475.

Lon B. Smith,

Associate Chief Counsel (Financial Institutions and Products).

[FR Doc. 03–11047 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1480

RIN 3076AA10

Access To Neutrals Initiative

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service is proposing a new regulation to establish an Access to Neutrals Initiative. The main function of the Access to Neutrals Initiative is to provide a Registry of Neutrals—a list of individual dispute resolution providers who have documented their qualifications according to criteria outlined in the regulation in the categories of ADR experience, ADR education/training, substantive education in the content area and experience in the content area. The proposed Access to Neutrals Initiative also includes informational, ethical and continuing education requirements for individuals on the Registry of Neutrals as wellas a consumer complaint process. The proposed regulation provides for clients to access the Registry by Web site or by request from FMCS.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 7, 2003.

ADDRESSES: Send comments to Peggy A. McNeive, Acting Director of the Access to Neutrals Initiative, FMCS, 801 Walnut, Suite 501, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Peggy A. McNeive, Telephone: (816) 374–6215; Fax (816) 374–6026.

SUPPLEMENTARY INFORMATION: The Federal Mediation and Conciliation Service (''FMCS'' or ''the Agency'') is experiencing rapid growth in demand for its mediation and related alternative dispute resolution (ADR) services that may soon exceed the Agency's capacity to provide these services through its in-house staff of 200 professional mediators. Requests for ADR processes by other federal agencies, state governments, political subdivisions of states (agencies, cities, school districts, etc.) and other entities have added to FMCS' original mission to provide assistance in labor collective bargaining. Clients seek mediation and ADR services from FMCS for many types of disputes in addition to labor, including employment, public policy and multi-party regulatory negotiation disputes. Even greater numbers and different types of clients may seek assistance from FMCS in the future because of the leadership and credibility of FMCS in the area of dispute resolution. To meet the anticipated surge in demand, FMCS is proposing this regulation to provide its expanding base of clients with ready access to a pool of professional, private-sector neutrals equipped to handle workplace and organizational disputes arising outside of the labor/collective bargaining arena.

The Access to Neutrals Initiative (ANI) embodied in the proposed regulation would establish a registry of highly qualified private-sector neutrals,

screened and selected by the Agency according ot established standards, designed to meet the anticipated rise in demand for services. The registry would be an open resource designed to assist clients by giving them the tools to make their own informed selection from a broad base of professionals. FMCS will also utilize this registry to refer or appoint neutrals or panels of neutrals at the request fo the Agency's customers. To ensure that these neutrals meet the historically high standards set by FMCS, the regulation contains an evaluation and credentialing component as well as a provision to monitor indicators of the neutrals' performance on cases obtained through FMCS referral.

Neutrals who wish to participate on the registry would submit education and experience background information to FMCS for a determination of whether the applicant met the standards established by FMCS. For inclusion on the registry, neutrals would have to agree to abide by the informational, ethical and continuing education requirements established by FMCS, and to participate in a consumer complaint process. In addition, the registry would be subject to a procedure for checking the ongoing effectiveness of the overall program. In order to maintain the qualified pool of neutrals and increase the value of the registry, FMCS will work with universities and training providers to establish and/or expand alternative dispute resolution programs. Finally, in maintaining the registry, FMCS would leverage its existing computer network-based resources to maximize the advantages afforded by technology, streamline program administration, and provide excellent customer service.

The Agency developed the proposed regulation in keeping with its longstanding mandate to foster the use of effective conflict resolution processes. FMCS was established in accordance with the labor policy of the United States, which promotes and encourages the amicable resolution of employment disputes. Pursuant to Title II of the Labor Management Relations Act of 1947 (Pub. L. 80–101), as amended, (LMRA) the Agency has the obligation to ''assist parties'' to settle disputes ''through conciliation and mediation.'' (29 U.S.C. 173(a)) Under the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) 5 U.S.C. 571 *et seq.* (ADR Act), Congress conveyed authority upon FMCS to ''develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.'' 5 U.S.C. 571(c)(2). FMCS's rule making ability in this area is subject only to consultation with ''other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution.'' 5 U.S.C. 571(c).

In accordance with the ADR Act, FMCS has consulted with the Federal Interagency ADR Working Group, a group created by the ADR Act with representatives from federal agencies having an interest in the implementation of ADR in the federal sector. In 2000, Gary Hattal, Director of the FMCS Institute, and Richard Giacolone, Director of ADR/International Affairs at FMCS, consulted with the Federal Interagency Working Group about the establishment of a Roster of Neutrals by FMCS.

In addition, FMCS held three external focus group meetings to identify concerns and gather recommendations concerning how standards for referral of private-sector neutrals could be established and utilized. The focus group members included practitioners, members of academia, staff members of ADR centers and members of the FMCS staff. The first focus group met in October of 2000 and centered on qualifications standards for neutrals. The second focus group met in June of 2001 and centered on the processes to be used in vetting neutrals. The final focus group met in February of 2002 to review the initial report and recommendations complied by the University of Arkansas. Following receipt of a draft report and recommendations from the University of Arkansas on the three external focus groups, an internal focus group consisting of the Deputy Director, a Regional Director, a Director of Mediation Services, the Director of Education and Training, the Director of ANI and two field mediators, was convened to review the draft report and make recommendations to the Agency Director. Based on the information developed through the University of Arkansas report and the recommendations of the internal focus group, FMCS developed the proposed regulation. FMCS will continue to convene focus groups in the future to review and refine the ANI.

The Registry of Neutrals will be administered through the supervision of the Agency Director, the ANI Director, and the Neutrals Committee. The Committee membership will be at the discretion of the Director. A continual evaluation program will be developed; it will utilize focus groups and other evaluation tools to make recommendations on revising the ANI.

The proposed ANI will be self-sustaining. FMCS will establish an application and listing fee for individuals who wish to be placed on the Registry; there will also be a fee for those who request that FMCS appoint a neutral from the Registry or provide a list of neutrals from the Registry. The funds generated by these fees will be used for the purpose of covering the costs associated with the ANI.

The ANI regulation contains ten (10) subparts and two (2) Appendices. They are as follows:

Subpart A addresses the policy pertaining to administration of the ANI, the authority for implementing this regulation and sets forth the definitions of terms to be utilized in the regulation. Consistent with FMCS policy on neutrals, individuals who are included on the Registry of Neutrals cannot be engaging in work as an advocate in the area of labor relations.

Subpart B outlines the standards and requirements for individuals listed on the Registry of Neutrals, as well as the responsibilities of FMCS. The subpart also sets forth that the neutral is not acting in a capacity as an employee of the federal government, that he/she has a direct relationship with the parties who are employing him/her to conduct the case and that the neutral does not retain a right to be listed on the Registry. The subpart also addresses the criteria an individual must satisfy to be included on the Registry. The application process requires an executed application and a review of the individual's fulfillment of requirements in the form of awarded points for education/training and experience. Applicants who meet the requirements will then be recommended to Director of the Agency for possible inclusion of the Registry.

Subpart C addresses the process by which the clients of FMCS will select neutrals from the Registry of Neutrals. A computerized system will be established from which information on neutrals will be listed; customers will be able to sort the neutrals by several different categories, including but not limited to geographical area, experience and fees charged. Selections from the Registry of Neutrals may be made by either obtaining information from the computerized system or through contacting FMCS. A fee will not be charged for obtaining a neutral from the computerized system; a fee equivalent to the fee for obtaining a panel of arbitrators from FMCS will be charged for obtaining a panel of neutrals or for appointing a neutral from the Registry of Neutrals.

Subpart D addresses fees charged by the FMCS to listed neutrals and the method by which neutrals may bill

clients. FMCS will charge an application fee and a listing fee for neutrals on the Registry of Neutrals. Repeated complaints concerning a neutral's fees will be reviewed by FMCS and may be considered in determining if the neutral shall remain on the Registry.

Subpart E requires all listed individuals to advise FMCS of changes in his/her information and/or fee structure and comply with requests for documentation by the ANI. FMCS will supply pertinent information to prospective clients for selection purposes.

Subpart F establishes a complaint procedure for the ANI.

Subpart G outlines the collaborative process with educational programs to establish standards for pre-accreditation. FMCS will work with educational institutions and training facilities to review the programs' number of contact hours, experience of classroom instructors, and method of instruction to determine if the program will be preaccredited by FMCS. Educational institutions and training facilities will participate in this program on a voluntary basis; the institutions will pay a fee to cover the pre-accreditation expenses.

Appendix A sets forth the application fee, the listing fee and the fee for pre-accreditation of ADR programs to be charged by FMCS.

Appendix B sets forth the point system for determining whether a neutral meets the standards for the FMCS Registry of Neutrals.

Submit copies of electronic comment to *pmcneive@fmcs.gov. See* **SUPPLEMENTARY INFORMATION** for other information concerning electronic filing.

FOR FURTHER INFORMATION CONTACT: Peggy A. McNeive, Acting Director of the Access to Neutrals Initiative, FMCS, 801 Walnut Street, Suite 501, Kansas City, MO 64106–1823. Telephone (816) 374–6215; Fax (816) 374–6026.

Access to Information in Comments

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI.'' Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential without prior notice. All written comments will be available for inspection at the address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Electronic Access and Filing

All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not caused any significant economic effect on small entities which may request arbitration panels.

Executive Order 12866

This regulation has been deemed significant under section 3(f)(4) of Executive Order 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small Governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with Foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 1480

Access to neutrals; registry of neutrals, alternative dispute resolution.

For the reasons set forth in the preamble, FMCS proposes to add 29 CFR part 1480 as follows:

PART 1480—REGISTRY OF NEUTRALS

Subpart A—Policy on Roster of Neutrals; Administration of Roster

Sec.
1480.1 Scope and authority.
1480.2 Policy.
1480.3 Administrative responsibilities.
1480.4 Definitions.

Subpart B—Registry of Neutrals; Selection and Retention

1480.5 Registry and status of members.
1480.6 Listing on the Registry of Neutrals; criteria for inclusion and retention.

Subpart C—Selection of Neutrals by Users of the Registry of Neutrals

1480.7 Freedom of choice.
1480.8 Procedures for selecting a neutral.
1480.9 Computerized selection system.
1480.10 Request for neutral from FMCS.
1480.11 Reservation of rights.
1480.12 Fee schedule.

Subpart D—Fees for Application to the Registry and Charges for the Services of Neutrals

1480.13 Application fee.
1480.14 Per diem; fees for services.
1480.15 Disclosure.
1480.16 OANI notification.

Subpart E—Reports and Biographical Sketches.

1480.17 Reports to OANI.
1480.18 Biographical sketches.

Subpart F—Complaint Procedure

1480.19 Role of Director of FMCS.
1480.20 Agreement to adhere to the Code of Professional Responsibility.
1480.21 Addressing complaints.

Subpart G—Accreditation of Education Programs in ADR

1480.22 Collaboration with universities.
1480.23 Pre-accreditation examination.
1480.24 Review of programs.
1480.25 Training programs.
Appendix A—Schedule of Fees
Appendix B—Point System for Determining Qualifications for the FMCS Registry of Neutrals

Authority: 29 U.S.C. 171–180, 182–183; 5 U.S.C. 571–584.

Subpart A—Policy on Roster of Neutrals—Administration of Roster

§ 1480.1 Scope and authority.

This part is issued by the Federal Mediation and Conciliation Services (FMCS) under Title II of the Labor Management Relations act of 1947 (Pub. L. 80–101), as amended; authority is also based on the Administrative Dispute Resolution Act of 1996 (Public Law 104–320) 5 U.S.C., 571 *et seq.* (ADR Act), and the funding authority for FMCS. It applies to all neutrals listed on the FMCS Registry of Neutrals, to all applicants for listing on the Registry of Neutrals, and to all persons or parties

seeking to obtain from FMCS either names or panels of names of neutrals listed on the Registry of Neutrals in connection with disputes which are submitted to an alternate dispute resolution procedure (ADR).

§ 1480.2 Policy.

FMCS was established in accordance with the labor policy of the United States, which promotes and encourages the amicable resolution of employment disputes between the parties, rather than submitting such disputes through the adversarial processes. Submission of employment disputes through alternate dispute resolution procedures is an important feature of constructive employment relations as alternatives to adversarial processes. FMCS is establishing the Access to Neutrals Initiative (ANI) in accordance with its mandate concerning the labor policy of the United States.

§ 1480.3 Administrative responsibilities.

The Director of the FMCS has responsibility for all aspects of FMCS's ANI and is the final agency authority on all questions concerning the ANI and the procedures associated with it.

§ 1480.4 Definitions.

For purposes of this part:

Advocacy: An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant in matters of employment, including but not limited to, equal employment opportunity claims, workplace disputes, subjects of union representation, collective bargaining, unfair labor practices, and other areas generally recognized as constituting labor relations. This definition includes representatives of employers, or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters. This definition also includes individuals who are ''of counsel'' with a law firm which engages in the type of activities set fourth in this definition, or individuals who are affiliated with consulting firms who engage in those activities. Consultants who engage only in joint education or training or other non-adversarial activities are excluded from the definition of an advocate under this part.

Alternative Dispute Resolution: Any dispute procedure that is used in lieu of adjudication to resolve issues in controversy including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials or any combination thereof. For the purpose of this part arbitration is specifically excluded from the definition of alternative dispute resolution.

Neutrals Committee: The Director of the Agency shall establish a Neutrals Committee to be selected by the Director and shall include, but is not limited to, the Director of the ANI, FMCS Commissioners and private ADR specialists. The Director and/or his designee shall convene the Neutrals Committee meetings, as often as he/she deems necessary. A process for selecting applicants to be placed on the Registry of Neutrals shall be developed by the Office of the Access to Neutrals Initiative (OANI). The Neutrals Committee may review the qualifications of the applicants who have been awarded the minimum number of points under the system set forth in subpart D of this part to determine the applicants who should be recommended to the Director of FMCS for inclusion on the Registry of Neutrals.

Office of the Access to Neutrals Initiative: The Director of FMCS shall appoint the Director of the ANI who is in charge of the OANI. The OANI maintains a Registry of Neutrals; administers the Procedures for Selection of Neutrals; assists, promotes, and cooperates in the establishment of programs for training and developing neutrals; oversees the computerized selection system utilized by customers; assists customers in utilizing the computerized selection system and provides names or panels of names of neutrals from the Registry of Neutrals to parties requesting them. The OANI shall be responsible for accepting complaints from users of the Registry of Neutrals and for the investigation of such complaints when appropriate.

Subpart B—Registry of Neutrals; Selection and Retention

§ 1480.5 Registry and status of members.

(a) *Registry of Neutrals:* FMCS shall establish and maintain a Registry of Neutrals consisting of persons who meet the criteria for listing contained in subpart B of this part.

(b) *Adherence to standards and requirements:* Persons listed on the Registry of Neutrals shall be required to comply with the rules and regulations, established by FMCS, pertaining to ADR processes and such guidelines and procedures as may be issued by OANI pursuant to submpart B of this part. Neutrals shall conform to the ethical standards and procedures established by FMCS.

(c) *Status of Neutrals:* Persons who are listed on the Registry of Neutrals and are selected or appointed to conduct an ADR process do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the neutral's relationship is solely with the parties to the dispute except that neutrals are subject to certain reporting requirements and to standards of conduct as set forth in this part.

(d) *Role of FMCS:* FMCS has no power to:

(1) Compel parties to appear before a neutral;

(2) Enforce an agreement to submit a dispute to an ADR process;

(3) Compel parties to submit any issue to an ADR process;

(4) Influence, alter, or set aside agreements made by the parties during an ADR process;

(5) Compel, deny, or modify payment of compensation to a neutral.

(e) *Nominations and panels:* On request of the parties to an agreement to utilize ADR processes to settle their disputes, or where ADR processes may be provided for by statute, the parties may select a neutral utilizing the computerized selection process without a fee being assessed or, upon request from the parties, FMCS may provide the name or a list of names of neutrals for a nominal fee. Procedures for obtaining these services are outlined in subpart C of this part. The parties selection of a neutral from the computerized system, the submission of a list of neutrals to the parties by FMCS, or the selection of a neutral by FMCS for the parties shall not constitute a determination by FMCS that an agreement exists between the parties to resolve their disputes through the utilization of an ADR process; nor does such action constitute a ruling that the matter in controversy should be submitted for resolution under an ADR process. The OANI will not decide the merits of a claim by either party that a dispute is not subject of any agreement to utilize alternative dispute resolution processes.

(f) *Rights of persons listed on the Registry of Neutrals:* No person shall have any right to be listed or to remain listed on the Registry of Neutrals. FMCS retains its authority and responsibility to assure that the needs of the parties using its services are met. To accomplish this purpose, FMCS may establish procedures for the selection of neutrals, either through a computerized selection system to be utilized by the parties or the selection of a neutral or panel of neutrals by FMCS; factors to be considered in such selection may

include, but are not limited to, background and experience, availability, acceptability, geographic location, and the expressed preferences of the parties. FMCS may also establish procedures for the removal from the Registry of Neutrals of those neutrals who fail to adhere to provisions contained in this part.

(g) *Qualifications for the FMCS Registry of Neutrals:* The following qualifications must be met by an applicant for the neutral to be placed on the FMCS Registry of Neutrals:

(1) *General Criteria:* To be considered for selection on the Registry of Neutrals, applicants must have dispute resolution training and experience in employment mediation.

(2) *Advocacy:* Any person who at the time of application is an advocate as defined in § 1480.4, must agree to cease such activity before being recommended for inclusion on the Registry of Neutrals.

(3) *Criteria for Neutrals:* Neutrals will be evaluated according to the criteria set forth in Appendix B of this part.

§ 1480.6 Listing on the Registry of Neutrals; criteria for inclusion and retention.

(a) *Selection of applicants to be placed on the Registry of neutrals:* FMCS shall determine the time intervals during which it will accept applications to be included on the Registry of Neutrals and the number of individuals it will place on the Registry. Persons seeking to be listed on the Registry of Neutrals must complete and submit an application form, which may be obtained from OANI or from the FMCS ANI Web page. Upon receipt of an executed application, OANI will review the application, assure that it is complete, make such inquiries as are necessary and submit it to the selection process established by FMCS for neutrals. The Director of the ANI or the Neutrals Committee will review the completed applications of the individuals who have been awarded the minimum number of points necessary for consideration, as set forth in § 1480.5(g). The Director of ANI or his/her designee shall make all final decisions as to whether an applicant will be listed on the Registry of Neutrals. Each applicant shall be notified in writing of the Director's decision and the general reasons for the decision.

(b) *Duration of listing; Retention on Registry of Neutrals:* Neutrals will be listed on the Registry for a one (1) year term. The Director may remove an individual from the Registry of Neutrals or refused to extend the neutral's term for violation of this part and/or the Code of Professional Responsibility, as established by FMCS. Notice of cancellation shall be given to a person listed on the Registry of Neutrals whenever a member:

(1) No longer meets the criteria for inclusion;

(2) Does not provide a certification to FMCS that the neutral does not engage in advocacy, as defined in this part;

(3) The individual has not conducted at least three (3) cases in the previous two (2) years in which an ADR process was utilized. It is not a requirement that these cases are ones in which the parties selected the neutral from the Registry of Neutrals maintained by FMCS.

(4) The neutral has not provided the names and contact information for all the parties in three (3) of the cases the neutral participated in during the last 2 years. It is imperative the neutral inform the parties that FMCS may be contacting them to obtain general information concerning the ADR process.

(5) The neutral has not submitted a certification that he/she has met the training requirements and a statement of the manner in which those requirements were met. Individuals on the Registry of Neutrals will be required to attend one (1) hour of ethics/professional conduct training and nine (9) hours of continuing education or training in conflict resolution.

(6) The neutral has been the subject of complaints by parties who use FMCS services and the Director, after conducting an appropriate investigation, concludes there is cause for refusing to renew the neutral's term.

(7) The neutral has failed to submit his/her fee for being listed on the FMCS Registry of Neutrals.

(c) *Inactive status:* An individual on the Registry of Neutrals who continues to meet the criteria for listing on the Registry of Neutrals may request that he/she be put on ''inactive status'' on a temporary basis for any reason, except that the neutral wishes to return to work as an advocate; in that case, the neutral must remove his/her name from the Registry of Neutrals and apply for reinstatement when he/she is able to certify the he/she does not act as an advocate for any party.

(d) *Registry fee:* All neutrals will be required to pay an annual fee for listing on the Registry of Neutrals, as set forth in § 1480.13.

Subpart C—Selection of Neutrals by Users of the Registry of Neutrals

§ 1480.7 Freedom of choice.

Nothing contained in this part should be construed to require any party who utilizes the services of FMCS to obtain a neutral from the computerized system established by FMCS or to contact FMCS to obtain a list of neutrals or the name of a neutral from FMCS to conduct ADR processes.

§ 1480.8 Procedures for selecting a neutral.

The OANI has been delegated the responsibility for administering the Registry of Neutrals. The OANI shall oversee the establishment and maintenance of the computerized selection process and administer the process for individual requests for FMCS to provide parties with a list of neutrals and/or the name of a neutral to handle a case.

§ 1480.9 Computerized selection system.

FMCS shall establish and maintain a computerized selection system (selection system) listing the individuals on the Registry of Neutrals. Customers of FMCS shall be able to access the computerized selection system through the FMCS homepage or through a direct worldwide web address to the selection system site. Prior to obtaining access to the selection system, a user will be required to answer a short series of questions to establish the identity of the users of the system. The system will be set up to enable the users to select a neutral on the basis of several factors, for example, geographic region, experience in a particular field and fee charged. The parties will work with the selected neutral directly; the OANI does not need to be notified of the selection. The provision of a neutral from the selection system to either one or both of the parties does not signify the adoption of any position by the FMCS regarding the party's agreement to utilize ADR procedures or the matter in dispute.

§ 1480.10 Request for neutral from FMCS.

As an alternative to the computerized selection system, parties may either request that FMCS provide them with a panel of neutrals or that FMCS appoint a neutral to work on the case. In order to request a panel of neutrals, the parties must file an individual or joint request in writing. In contrast, to request appointment of a neutral by FMCS, the parties must submit a joint request in writing. FMCS will utilize the Registry or Neutrals to provide the parties with a panel of neutrals and/or to select a neutral for the parties. The parties will work with the selected neutral directly; however, they should notify the OANI of the selection. The provision of a neutral from the selection system to either one or both of the parties does not signify the adoption of any position by the FMCS regarding the party's

agreement to utilize ADR procedures or the matter in dispute.

(a) FMCS will provide the parties with a randomly selected list of neutrals from the geographic area in which the site of the dispute is located, unless otherwise requested from the parties;

(b) The parties may request neutrals based on other factors, such as experience in a particular area, however, any request for a list of neutrals, other than by geographic area, must be a joint request by the parties;

(c) If the parties do not agree on a neutral from the first panel, OANI will furnish a second and, if necessary, a third panel to the parties upon joint request accompanied by payment of an additional fee and a short explanation of why the parties could not agree on a neutral from the other panel(s). If parties are unable to agree on a selection after having received three (3) panels, the ORNI will make a direct appointment upon joint request.

§ 1480.11 Reservation of rights.

FMCS reserves the right to decline to submit a panel or make appointment of a neutral, if the request submitted is overly burdensome or otherwise impracticable. FMCS, in such circumstances, may refer the parties to an FMCS mediator to assist in the design of an alternative solution. FMCS may also decline to service any requests from parties with a demonstrated history of non-payment of a neutrals fee or other behavior that interferes with the spirit or operation of the Registry of Neutrals process.

§ 1480.12 Fee schedule

FMCS will not charge parties for the use of the electronic selection system. FMCS will charge the parties a nominal fee for all requests for lists, panels, appointment of neutrals and other major services, if the parties request such services from FMCS. A schedule of fees is included in Appendix A of this part.

Subpart D—Fees for Application to the Registry and Charges for the Services of Neutrals

§ 1480.13 Application fee.

FMCS will charge all neutrals an application fee at the time he/she submits his/her application for inclusion on the Registry of Neutrals. In addition, FMCS will charge all neutrals an annual fee at the time he/she renews his/her listing on the Registry of Neutrals. Appendix A of this part contains the schedule of application and annual listing fees.

§ 1480.14 Per diem; fees for services.

All neutrals on the Registry of Neutrals may charge a per diem and other pre-determined fees for services, if the amount of the fee has been provided in advance to FMCS. Each neutral's maximum per diem and other fees are set forth on a biographical sketch which will be available on the selection system website and which will be submitted to the parties who request a panel of neutrals or the appointment of a neutral. The neutral shall not change any fee or add charges without giving at least thirty (30) days advance written notice to FMCS. Neutrals with dual addresses must bill the parties for travel expenses from the least expensive business address to the hearing site.

§ 1480.15 Disclosure.

Neutrals will divulge all charges to the parties and obtain agreement thereto immediately after selection or appointment for the case.

§ 1480.16 OANI notification.

The OANI should be notified of any neutral's deviation from the policies expressed in this part. While the OANI does not resolve individual fee disputes, repeated complaints concerning the fees charged by a neutral will be brought to the attention of the Director for consideration. Similarly, repeated complaints by neutrals concerning non-payment of fees by the parties may lead to the denial of services or other actions by the OANI.

Subpart E—Reports and Biographical Sketches

§ 1480.17 Reports to OANI.

Individuals listed on the Registry of Neutrals shall execute and return all documents, forms and reports required by the OANI. They shall also keep the OANI informed of changes of address, telephone numbers, availability and of any business or other connection or relationship which involves employment relations or which creates or gives the appearance of advocacy as defined in § 1480.4.

§ 1480.18 Biographical sketches.

The OANI will provide biographical sketches to the parties on each person admitted to the Registry of Neutrals from information supplied by applicants. Neutrals may request revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. The OANI reserves the right to decide and approve the format and content of the biographical sketches.

Subpart F—Complaint Procedure

§ 1480.19 Role of the Director of FMCS.

FMCS will establish a complaint procedure for the user of the Registry of Neutrals. The complaint procedure will be administered by the Director of FMCS or his/her designee.

§ 1480.20 Agreement to adhere to the Code of Professional Responsibility.

Applicants for the Registry of Neutrals will be required to execute a statement agreeing to adhere to the Code of Professional Responsibility developed by FMCS and to cooperate with any and all FMCS investigations, in the event a complaint is filed against the neutral.

§ 1480.21 Addressing Complaints.

FMCS will address and/or investigate all complaints and take appropriate actions, up to and including the permanent exclusion of a neutral from the Registry, based on the nature and severity of the complaint and the results of the investigation. FMCS reserves the right to determine, on a case by case basis, whether it is appropriate to conduct an independent investigation of a complaint, if a similar complaint has been filed against the neutral in a different forum.

Subpart G—Accreditation of Educational Programs in ADR

§ 1480.22 Collaboration with universities.

The OANI will collaborate with universities and training programs to institute educational programs designed to assist the applicants in obtaining the maximum points possible under the Point System for Determining Qualifications for the FMCS Registry of Neutrals. FMCS will make available to every institute the opportunity to apply for pre-accreditation. Programs of educational institutions and/or training providers will be pre-accredited for a specific number of points under the Point System. During the application process, if an applicant provides documentation that he/she successfully completed the program, he/she will be awarded the number of points assigned to the educational institution or training provider during the pre-accreditation process.

§ 1480.23 Pre-accreditation examination.

A pre-accreditation examination will include a review of the minimum amount of curriculum time, practicum, and the qualifications of the instructors. Criteria for accreditation will include:

(a) The number of credit hours or contact hours, hours of class instruction, provided under the program. Classroom

hours may include hours conducted through on-line training.

(b) A course of instruction that provides a coordinated and comprehensive overview of ADR theory and practice.

(c) Practicum that includes a method of objective evaluation individualized feedback for the student.

(d) Staff qualifications, which include but are not limited to, the overall staff being trained in the theory and practice of ADR techniques and workplace issues.

§ 1480.24 Review of programs.

A review of the programs for educational institutions for the purpose of pre-accreditation will occur every three (3) years; a review of the programs for training providers for the purpose of pre-accreditation will occur every two (2) years.

§ 1480.25 Training programs.

FMCS will offer a comprehensive training program for the purpose of providing the applicants the opportunity to obtain the maximum number of points under the Point System for Determining Qualifications for the FMCS Registry of Neutrals. Applicants will not be required to attend the FMCS program, nor will applicants who attend the program be given preferential treatment over pre-accredited providers.

Appendix A—Schedule of Fees

1. *Application fee:* $250.00 for each application (In the event the applicant does not obtain the minimum of 10 points necessary to obtain consideration of his/her application, but submits additional information within one year of the original application, he/she will not be required to pay an additional fee for consideration of the application.

2. *Annual listing fees for neutrals:* This will be established based on the number of neutrals listed on the Registry of Neutrals.

3. *Request for panel of neutrals:* $50.00 for each panel request (includes subsequent appointments).

4. *Requests for appointment of neutral:* $50.00 for appointment when a panel is not requested.

5. *Requests for pre-accreditation:* To be determined based on expenses and number of hours required to review the process.

Appendix B—Point System for Determining Qualifications for the FMCS Registry of Neutrals

A list of the categories in which a candidate is able to obtain points towards selection for the FMCS Registry of Neutrals is set forth in this Appendix. A minimum of 10 points will be required for inclusion on the FMCS Registry of Neutrals.

1. *ADR experience* (0–9 points, at least 1 point is required in this area) *

9 points: Substantial ADR experience with large and complex cases of significance (large money cases, large number of complex issues or complex relationships between the parties, cases of national significance)

7 points: Conduct or co-conduct 120 ADR procedures in employment dispute cases

5 points: Conduct or co-conduct 80 employment cases or 120 other cases, of which 40 must be employment cases

3 points: Conduct or co-conduct 40 employment cases or 80 other cases, of which 20 must be employment cases

1 point: Conduct or co-conduct 20 employment cases or 50 other cases, of which 10 must be employment cases

* ADR experience may include acting as a third party neutral in any dispute procedure that is used in lieu of adjudication to resolve issues in controversy including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials or any combination thereof. For the purpose of this application, arbitration is specifically excluded from the definition of alternative dispute resolution procedure. To count as a case, the neutral must have been present for at least one face-to-face, or electronic meeting, between/among participants.

2. *ADR education/training* (0–5 points, at least 1 point is required in this area **)

5 points: Documentation of successful completion of an established academic course of study in conflict resolution conducted by FMCS, its academic partners or other academic institutions, with a letter of recommendation from a faculty member who has observed the applicant in an ADR session, or documentation that the alternative dispute resolution program met equivalent standards as those accredited by FMCS. A course must include at least 200 classroom hours of instruction and role-play to be considered as an established course of study in conflict resolution.

3 points: 160 hours of documented training in conflict resolution with proof of individualized feedback in ADR procedures practice or role-play

1 point: 120 hours of documented training in conflict resolution with proof of individualized feedback in ADR procedures practice or role-play

3. *Substantive experience in roster content area* (0–2 points, at least one point must be received in either this area or the area of substantive education in the roster area)

2 points: 10 years of experience in workplace conflict resolution. Examples: employment law attorney, human resource director, labor organization representative, equal employment opportunity specialist

1 point: 5 years of experience in workplace conflict resolution

4. *Substantive education in roster content area* (0–2 points, at least one point must be received in either this area or the area of substantive experience in the workplace area.) **

2 points: Possesses a significant educational background in the employment or dispute resolution area (degree or in roster area, such as labor-management relations, human resource management, employment law, etc.)

1 point: Attendance in a documented introductory training program of at least 40 hours of classroom hours in the workplace area.

** Educators can be awarded points in these areas for teaching; however, they can not be awarded points for teaching the same class more than once; they can be awarded points for teaching more than one class in the area, as long as it does not cover substantially the same material.

John J. Toner,

Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. 03–10959 Filed 5–2–03; 8:45 am]

BILLING CODE 6372–01–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Commodity Trading Advisors

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this proposed rule to prescribe minimum standards applicable to certain commodity trading advisors pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs and to delegate its authority to examine such commodity trading advisors to the Commodity Futures Trading Commission.

DATES: Written comments may be submitted to FinCEN on or before July 7, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 352 CTA Regulations.'' Comments may also be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 CTA Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel (FinCEN), (703)

905–3590; Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480; or Office of the General Counsel (Treasury), (202) 622–1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 5318(h)(2) authorizes the Secretary of the Treasury (Secretary), after consulting with the appropriate Federal functional regulator,[1] to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not subject to BSA regulation.

Commodity trading advisors (CTAs) that are registered or required to register with the CFTC are defined as ''financial institutions'' under the BSA.[2] CTAs, as well as futures commission merchants and commodity pool operators (CPOs), which are also CFTC registrants, were added to the statutory definition of ''financial institution'' by the Act,[3] and thus are subject to the BSA's anti-money laundering program requirements. Previously, Treasury and FinCEN temporarily exempted certain financial institutions, including CTAs and CPOs, from the requirement that they establish anti-money laundering programs.[4] In addition, FinCEN has issued interim final rules for numerous types of financial institutions[5] and proposed rules for other financial institutions,[6] and is studying how to design such standards for numerous other types of financial institutions.

FinCEN, in this proposed rule, identifies and defines those CTAs that will be subject to the requirement that financial institutions have anti-money laundering programs, and sets forth minimum requirements for an anti-money laundering program for these entities that are based on the minimum standards set forth in BSA section 5318(h)(1).

FinCEN also is proposing today a similar rule for investment advisers, which is published elsewhere in this issue of the **Federal Register**.

II. Money Laundering and Commodity Trading Advisors

Money laundering occurs when money from illegal activity is moved through the financial system in such a way as to make it appear that the funds came from legitimate sources. Money laundering usually involves three stages: the placement, layering, and integration stages. In the placement stage, cash or cash equivalents are placed into the financial system. In the layering stage, the money is transferred or moved to other accounts through a series of financial transactions designed to obscure the origin of the money. Finally, in the integration stage, the funds are reintroduced into the economy so that the funds appear to have come from legitimate sources. The crime of money laundering also encompasses the movement of funds to support terrorism or terrorist organizations.[7] These funds may be from illegitimate or legitimate sources. Even where the funds derive from legitimate sources, their movement may follow the money laundering pattern described above in order to disguise the identity of the originator of the funds.

Commodity futures and options accounts are vehicles that could be used to launder illicit funds. CTAs who direct such accounts are in a unique position to observe activity that may be indicative of money laundering. As such, they need to be aware of what types of activity may indicate potential money laundering or terrorist financing and implement a compliance program designed, among other things, to deter and detect such activity.[8]

III. Section-by-Section Analysis

A. Definition of Commodity Trading Advisor

Section 103.133(a)(1) of the proposed rule defines ''commodity trading advisor'' as any person registered or required to be registered with the CFTC as a CTA under the Commodity Exchange Act (CEA)[9] and that directs client commodity futures or options accounts. Section 103.133(a)(2) defines ''directs'' in this context based upon the definition of ''direct'' in the CFTC's regulations.[10]

The CEA defines a CTA generally as any person who, for compensation or profit, engages in the business of advising others, either directly or indirectly, as to the value or advisability of trading futures contracts or commodity options authorized under the CEA, or issues analyses or reports concerning trading futures or commodity options.[11] CTAs are required to register with the CFTC,[12] although there are a limited number of

[1] The Federal functional regulator for commodity trading advisors is the Commodity Futures Trading Commission (CFTC).

[2] 31 U.S.C. 5312(c).

[3] Section 321(b).

[4] *See* 31 CFR 103.170, 67 FR 67547 (Nov. 6, 2002).

[5] *Anti-Money Laundering Programs for Financial Institutions,* 67 FR 21110 (April 29, 2002); *Anti-Money Laundering Programs for Mutual Funds,* 67 FR 21117 (April 29, 2002); *Anti-Money Laundering Programs for Money Services Businesses,* 67 FR 21114 (April 29, 2002); *Anti-Money Laundering Programs for Operators of a Credit Card System,* 67 FR 21121 (April 29, 2002).

[6] *Anti-Money Laundering Programs for Unregistered Investment Companies,* 67 FR 60617 (Sept. 26, 2002); *Anti-Money Laundering Programs for Insurance Companies,* 67 FR 60625 (Sept. 26, 2002); *Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels,* 68 FR 8480 (Feb. 21, 2003).

[7] 18 U.S.C. 1956, 2339A and 2339B.

[8] 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or ''specified unlawful activity.'' Although the standard of knowledge required is ''actual knowledge,'' actual knowledge includes ''willful blindness.'' Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she ignored ''red flags'' that indicated illegality.

[9] 7 U.S.C. 1 *et seq.*

[10] CFTC Rule 4.10(f), 17 CFR 4.10(f), provides that the term ''direct'' refers to ''agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.'' CFTC Rule 4.10(a), 17 CFR 4.10(a), defines ''commodity interest'' as ''(1) any contract for the purchase or sale of a commodity for future delivery; and (2) any contract, agreement or transaction subject to [CFTC] regulation under section 4c or 19 of the [CEA].''

[11] The CEA defines the term ''commodity trading advisor'' as ''any person who * * * for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in'' futures or commodity options, or who ''for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports'' concerning trading in futures or commodity options. 7 U.S.C. 1a(6).

[12] 7 U.S.C. 6m. According to the National Futures Association (NFA), the self-regulatory organization for the futures industry, as of January 31, 2003 there were 2,734 CTAs registered with the CFTC.

exemptions.[13] One important exemption is for persons who neither direct client accounts nor provide commodity trading advice tailored to the commodity interest or cash market positions or other circumstances or characteristics of particular clients.[14] This exemption includes, among other categories, persons who publish newsletters, maintain non-customized Internet web sites, and create non-customized computer software.[15] Although these persons are exempt from registration, according to the NFA, a small number of them have opted to register with the CFTC. Nonetheless, even if they are registered, FinCEN believes it is appropriate to exclude these persons from the scope of this proposed anti-money laundering program rule, because they do not direct client accounts and thus, in light of their lack of information about particular clients, they are in no position to observe activity that may indicate the presence of money laundering or terrorist financing.

Although CTAs that provide commodity trading advice tailored to the commodity interest or cash market positions or other circumstances or characteristics of particular clients are not covered by this exemption, FinCEN has determined to exclude them as well, so that only those CTAs that direct client accounts will be subject to the proposed rule.[16] This is because a CTA that only provides commodity trading advice, without directing the account, is not in a position to actually observe potentially suspicious activity; indeed, a CTA whose service is limited to providing trading advice may not even know whether the client actually follows that advice.[17] Only CTAs that direct accounts are in a position to observe potential money laundering or terrorist financing activity.

In some instances, CTAs that would be subject to the proposed rule advise pooled investment vehicles that are themselves required to maintain anti-money laundering programs under BSA rules,[18] such as unregistered investment companies, or that are sponsored or administered by financial institutions subject to such requirements.[19] To prevent overlap and redundancy, the proposed rule would permit CTAs covered by the rule to exclude from their anti-money laundering programs any investment vehicle they advise that is subject to an anti-money laundering program requirement under BSA rules.

B. The Anti-Money Laundering Program

1. Individualized Program

Section 103.133(b) of the proposed rule would require each CTA subject to the proposed rule to develop and implement a program reasonably designed to prevent the CTA from being used for money laundering or terrorist financing, and to achieve and monitor compliance with other applicable requirements of the BSA and FinCEN's implementing regulations. The legislative history of the Act explains that the requirement to have an anti-money laundering program is not a one-size-fits-all requirement. The general nature of the requirement reflects Congress' intent that each financial institution should have the flexibility to tailor its program to fit its business, taking into account factors such as its size, location, activities, and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all financial institutions subject to the Act, from the largest to the smallest, have in place policies and procedures appropriate to monitor for anti-money laundering compliance.[20]

The proposed rule is designed to give CTAs flexibility to tailor their programs to their specific circumstances so long as the minimum requirements are met. For example, a CTA that directs a wide variety of commodity interest trading accounts may require more extensive oversight by its compliance officer than would a CTA that directs a smaller number of individual accounts. The former also would require more frequent independent review. Similarly, the educational component of the program should be tailored towards the size of the CTA, the type of trading or investing, and the identities of the CTA's clients.

To assure that the requirement to have an anti-money laundering program receives the highest level of attention, the proposed rule would require that each CTA's program be approved in writing by the board of directors or trustees, or if it doesn't have one, by its sole proprietor, general partner, or other persons who have similar functions.[21] The four required elements of the anti-money laundering program are discussed below.

2. The Four Required Elements of Each Anti-Money Laundering Program

(1) *Establish and Implement Policies, Procedures, and Internal Controls Reasonably Designed To Prevent the CTA From Being Used To Launder Money or Finance Terrorist Activities, Including But Not Limited To Achieving Compliance With the Applicable Provisions of the BSA and FinCEN's Implementing Regulations*

Each CTA subject to the proposed rule would be required to develop a written program reasonably designed to prevent it from being used to launder money or finance terrorist activities and to achieve compliance with applicable requirements of the BSA and FinCEN's implementing regulations. As described below, this would require each CTA to review the types of services it provides and the nature of its clients to identify its vulnerabilities to money laundering

[13] *See* Section 4m of the CEA, 7 U.S.C. 6m, and CFTC Rule 4.14(a), 17 CFR 4.14(a). These provisions exempt from the registration requirement a number of persons who meet the definition of CTA. For example, section 4m(3) of the CEA, 7 U.S.C. 6m(3), exempts from the registration requirement persons who are registered as investment advisers with the Securities and Exchange Commission and whose business does not consist primarily of acting as a CTA and who do not act as a CTA to an entity that is primarily engaged in trading commodity interests. Another example is CFTC Rule 4.14(a), which exempts from registration, among other entities, certain persons who are registered with the CFTC in other capacities. Any person who is not registered as a CTA by virtue of 7 U.S.C. 6m or CFTC Rule 4.14(a) is not a ''financial institution'' pursuant to section 5312 of the BSA and is excluded from the scope of this proposed rule. It should be noted that some of these exempt persons may have anti-money laundering obligations due to their registration in another capacity.

[14] *See* CFTC Rule 4.14(a)(9), 17 CFR 4.14(a)(9).

[15] The CFTC has determined to minimize the regulatory impact on speech, other than deceptive or misleading speech. For this reason, the CFTC exempts from registration those persons who meet the definition of CTA, but whose advice to clients is limited to non-customized communications, such as newsletters or Internet web sites, and who do not direct client accounts. 65 FR 12938 (March 10, 2000).

[16] The NFA estimates that approximately one quarter of all registered CTAs direct client accounts.

[17] It should be noted that futures commission merchants are not required to furnish account statements to CTAs that merely provide trading advice to clients and do not direct their accounts. *Compare* CFTC Rule 1.33(d), 17 CFR 1.33(d).

[18] CTAs advise commodity pools as well as individual customers. A ''pool'' is defined in CFTC Rule 4.10 as ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.'' 17 CFR 4.10(d)(1).

[19] For example, a CTA may act as advisor to other investment vehicles, such as certain unregistered investment companies or an insurance company's separate accounts, that will be subject to anti-money laundering program rules under pending FinCEN proposals. *See, e.g., Anti-Money Laundering Programs for Unregistered Investment Companies,* 67 FR 60617 (Sept. 26, 2002); *Anti-Money Laundering Programs for Insurance Companies,* 67 FR 60625 (Sept. 26, 2002).

[20] *See* USA PATRIOT Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes), 147 Cong. Rec. S10990–02; Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act), 147 Cong. Rec. H6924–01.

[21] The board's approval could be given at its first regularly scheduled meeting after the program is adopted.

and terrorist financing activity. The CTA would then develop and implement procedures and controls that would reasonably address each vulnerability and assure compliance with these requirements, and periodically assess the effectiveness of its procedures and controls.

A CTA's vulnerabilities to money laundering and terrorist financing activity are minimal with respect to clients for whom the CTA does not direct accounts. CTAs that direct accounts for some clients may have other clients for whom the CTA provides very different services, such as trading advice, newsletters or research reports. Accordingly, a CTA could exclude from its anti-money laundering program clients for whom it does not direct accounts.

CTAs face higher vulnerability to money laundering when clients place their assets with a futures commission merchant and the funds are directed by the CTA. A CTA's procedures for these clients, for example, would seek to identify unusual transactions whereby clients deposit checks drawn on (or wire transfers made from) accounts of third parties with no family or business relation to the client, or through numerous checks or transfers from one or more issuers or institutions. In addition, a CTA's procedures would identify unusual transactions, such as those involving the subsequent withdrawal of assets from the futures commission merchant through transfers to unrelated or numerous accounts, or to accounts in countries in which drugs are known to be produced or other countries at high-risk for money laundering or terrorist financing.[22]

A CTA's vulnerability to money laundering may rise further with respect to clients who make frequent additions to or withdrawals from their accounts held with futures commission merchants. A CTA would need to establish procedures to identify which clients engage in such activity and assess the reasonableness of the additions or withdrawals in light of the clients' investment objectives and the CTA's existing knowledge of the clients' personal finances or business operations.

A CTA faces the highest degree of vulnerability in the event that clients deposit or attempt to deposit assets in their accounts at futures commission merchants in the form of cash. Similar vulnerability exists if the client establishes custodial arrangements that allow the client to remain anonymous to other intermediaries. The CTA would need to establish procedures to assess whether there are legitimate circumstances underlying the client's request before proceeding with the relationship.

A CTA's program should take into account the extent to which it provides trading advice to pooled investment vehicles. As discussed above, CTAs to pooled investment vehicles that are subject to anti-money laundering program requirements under BSA rules may exclude the vehicles from their anti-money laundering programs. However, a CTA must include other pooled vehicles it advises in its anti-money laundering program.

CTAs providing advice to pooled investment vehicles that are not subject to BSA anti-money laundering program requirements and that are created and administered by a third party,[23] would have little or no information about the investors in the pooled vehicle or their transactions. In this situation, the CTA would need to establish procedures to assess whether the entity that administers the vehicle, or the nature of the vehicle itself, reduces the risk of money laundering. For example, an employee retirement savings plan sponsored by a public corporation that accepts assets only in the form of payroll deductions or rollovers from other similar plans presents no realistic opportunity for money laundering activity, whereas an offshore vehicle not itself subject to any anti-money laundering program requirement would present a more significant risk. The CTA's program would need to analyze the money laundering risks posed by a particular investment vehicle by using a risk-based evaluation of relevant factors including: the type of entity; its location; the statutory and regulatory regime of that location (*e.g.,* if the entity is organized or registered in a foreign jurisdiction, does the jurisdiction comply with the European Union anti-money laundering directives, and has the jurisdiction been identified by the Financial Action Task Force as non-cooperative); and the CTA's historical experience with the entity or the references of other financial institutions. As the entity's potential vulnerability to money laundering increases, the CTA's procedures would need to reasonably address these increased risks, such as by obtaining and reviewing information about the identity and transactions of the investors in the vehicle.

FinCEN recognizes that some elements of a CTA's anti-money laundering program may best be performed by personnel of these separate entities, such as futures commission merchants. It is permissible for a CTA to delegate contractually appropriate parts of the implementation and operation of its anti-money laundering program to another affiliated or unaffiliated entity. However, the CTA would remain responsible for the effectiveness of the program, as well as ensuring that federal examiners are able to obtain information and records relating to the anti-money laundering program and to inspect the third party for purposes of the program. Accordingly, the CTA would still be required to identify the particular procedures appropriate to address its vulnerability to money laundering and terrorist financing, and then undertake reasonable steps to assess whether the third party would carry out such procedures effectively. For example, it would not be sufficient simply to obtain a certification from the third party that it ''has a satisfactory anti-money laundering program.''

Certain CTAs also may be registered in other capacities, including as futures commission merchants or introducing brokers. These CTAs may already have anti-money laundering programs in place.[24] FinCEN does not require that such CTA's establish multiple anti-money laundering programs. The same program may apply to an entity that functions as more than one type of financial institution, so long as the program is appropriately designed to address the different risks posed by the different aspects of the entity's business and satisfies each of the anti-money laundering program requirements to which it is subject in each of its capacities.

Policies, procedures, and internal controls also should be reasonably designed to assure compliance with BSA requirements. The BSA currently requires CTAs to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than $10,000 in one transaction or two or more related transactions.[25] In order to

[22] *See, e.g., http://www.state.gov* for International Narcotics Control Reports listing states that are sponsors of terrorism or have narcotics problems, and *http://www.fincen.gov* for FinCEN Advisories identifying countries whose anti-money laundering regimes do not meet international standards.

[23] FinCEN understands that CTAs (acting in their capacity as a CTA) do not create or administer pooled investment vehicles, so that all CTAs advising pooled vehicles that are not subject to an anti-money laundering program requirement would fall within this description.

[24] Previously, the NFA issued a rule for its futures commission merchant members and introducing broker members, requiring them to implement anti-money laundering programs. NFA Rule 2–9(c).

[25] *See* 31 CFR 103.30. It should be noted, however, that CFTC Rule 4.30, 17 CFR 4.30, prohibits a CTA that is not also a futures

Continued

develop a compliant anti-money laundering program, the program should be reasonably designed to detect and report not only transactions required to be reported on Form 8300, but also to detect activity designed to evade such requirements. Such activity, commonly known as ''structuring,'' may involve making deposits into a trading or investment account of $10,000 or more with multiple money orders, travelers' checks, or cashier's checks or other bank checks, each with a face amount of less than $10,000. Such methods of payment may be indicative of money laundering, particularly when the payment instruments were obtained from different sources or the payments were made at different times on the same day or on consecutive days or close in time.

FinCEN is currently considering whether CTAs should be subject to additional BSA requirements, including filing suspicious activity reports pursuant to section 5318(g) of the BSA and complying with accountholder identification and verification procedures pursuant to section 326 of the Act. If CTAs become subject to additional requirements, they will need to update their compliance programs to include appropriate procedures, training, and testing functions.

(2) *Provide for Independent Testing for Compliance To Be Conducted by Company Personnel or by a Qualified Outside Party.*

It is necessary that a CTA provide for periodic testing of its anti-money laundering program in order to assure that the program is functioning as designed. The testing should be conducted by personnel knowledgeable regarding applicable BSA requirements. The testing may be accomplished by employees of the CTA, its affiliates, or unaffiliated service providers, so long as those same employees are not designated to implement and monitor the program under requirement (3) below. The frequency of such a review would depend upon factors such as the size and complexity of the CTA's business and the extent to which its business model may be subject to a higher risk of money laundering than other business models. A written assessment or report should be a part of the review, and any recommendations resulting from such review should be promptly addressed.

(3) *Designate a Person or Persons Responsible for Implementing and Monitoring the Operations and Internal Controls of the Program.*

The CTA must charge a person (or group of persons) with the responsibility for overseeing the anti-money laundering program. The person or group of persons should be competent and knowledgeable regarding applicable BSA requirements and money laundering risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures. Whether the person or group of persons is dedicated full time to BSA compliance would depend upon the size and complexity of the CTA's business. In addition, a person responsible for the overall supervision of the program should be an officer of the CTA.

(4) *Provide Ongoing Training for Appropriate Persons.*

Employee training is an integral part of any anti-money laundering program. Employees of the CTA must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.[26] For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

C. Examination

The proposed rule includes a provision under which FinCEN would delegate examination authority to the CFTC, to enable the CFTC to examine CTAs' compliance with the anti-money laundering program requirement.

D. Voluntary Filing of Suspicious Activity Reports

In addition to complying with the requirements of this proposed rule, CTAs are encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–566–3974). The BSA provides immunity from civil liability for any financial institution, its directors, officers, employees, or agents that make such a disclosure of any possible violation of law or regulation.[27] The Act clarifies that this safe harbor immunity also applies in the case of any voluntary reporting of a suspicious transaction or under any contract or other legally enforceable agreement, such as an arbitration agreement.

IV. Request for Comments

FinCEN requests comment on all aspects of this proposed rule. FinCEN specifically requests comment on the definition of ''commodity trading advisor'' in proposed rule 103.133(a) and whether this definition should include other categories of CTAs, such as any of those that are exempt from registration under CFTC rules, or that are required to register with the CFTC but do not direct client accounts. FinCEN also requests comment regarding the proposed provisions designed to avoid imposing overlapping or duplicative anti-money laundering program regulations of CTAs and other financial institutions that are (or are proposed to be) subject to anti-money laundering program requirements.

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The CFTC has stated that it would evaluate within the context of a

commission merchant, from receiving any funds, securities, or property from clients in the CTA's name. The Form 8300 requirement thus applies where the CTA transmits non-cash instruments such as cashier's checks made payable to the Futures Commission merchant for deposit into a client's account.

[26] Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the Office of Foreign Assets Control and other government lists of suspected terrorists and terrorist organizations.

[27] *See Lee v. Bankers Trust Co.,* 166 F.3d 540, 544 (2nd Cir. 1999) (stating that in enacting 31 U.S.C. 5318(g), Congress ''broadly and unambiguously provide[d] * * * immunity from any law (except the federal Constitution) for any statement made in a [suspicious activity report] by anyone connected to a financial institution'').

particular proposed rule whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[28] This proposed rule would affect CTAs of all sizes. However, the economic burden should be minimal. The costs associated with the development of anti-money laundering programs are attributable to the mandates of section 352 of the Act. In addition, the proposed rule would not impose significant burdens on those CTAs covered by the rule because they are already subject to Form 8300 reporting and may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule. Similarly, the procedures currently in place at other financial institutions such as futures commission merchants and introducing brokers to comply with existing BSA rules should help guide CTAs in establishing their own anti-money laundering programs. Finally, CTAs subject to the proposed rule would not be compelled to obtain more sophisticated legal or accounting advice than that already required to run their businesses.

Finally, FinCEN believes that the flexibility incorporated into the proposed rule will permit each CTA to tailor its anti-money laundering program to fit its own size and needs. In this regard, FinCEN believes that expenditures associated with establishing and implementing an anti-money laundering program will be commensurate with the size of a CTA. If a CTA is small, the burden to comply with the proposed rule should be *de minimis*.

VI. Executive Order 12866

This proposed rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VII. Paperwork Reduction Act

The collection of information (recordkeeping requirement) contained in this proposed rule has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by July 7, 2003.

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

The collection of information (recordkeeping requirement) in this proposed rule is in 31 CFR 103.133(b). The information would be used by federal agencies to verify compliance by CTAs with the provisions of 31 CFR 103.133. The collection of information is mandatory.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.133(b) is presented to assist those persons wishing to comment on the information collection.

Description of Recordkeepers: Commodity trading advisors as defined in 31 CFR 103.133(a).

Estimated Number of Recordkeepers: 650.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the collection of information in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 650 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN'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; (d) ways to minimize the burden of the collection of information on commodity trading advisors, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Brokers, Commodity futures, Counter money laundering, Counter-terrorism, Currency, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is amended to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 321, 326, 352, Pub. L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

2. Section 103.56 is amended by redesignating paragraph (b)(8) as (b)(9) and revising it, and by adding a new paragraph (b)(8) to read as follows:

* * * * *

(b) * * *

(8) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors (as that term is defined in § 103.133(a));

(9) To the Commissioner of Internal Revenue with respect to all financial institutions for which examination authority is not otherwise delegated pursuant to this paragraph (b).

3. Subpart I of part 103 is amended by adding new § 103.133 to read as follows:

§ 103.133 Anti-money laundering programs for commodity trading advisors.

(a) *Definitions.* For the purposes of this section:

(1) The term ''*commodity trading advisor*'' means a person registered or required to be registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) and that directs client commodity futures or options accounts.

(2) For purposes of this definition the term ''*directs*'' refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity futures or options account without the client's specific authorization.

(b) *Anti-money laundering program required.* Effective [date that is 90 days after the date of publication of a final rule in the **Federal Register**]:

(1) Each commodity trading advisor shall develop and implement a written

[28] 47 FR 18618, 18620 (April 30, 1982).

anti-money laundering program reasonably designed to prevent the commodity trading advisor from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) (BSA) and this part. The commodity trading advisor may exclude from its anti-money laundering program any pooled investment vehicle it advises that is subject to an anti-money laundering program requirement under another provision of this subpart.

(2) Each commodity trading advisor's anti-money laundering program must be approved in writing by its board of directors or trustees, or if it doesn't have one, by its sole proprietor, general partner, or other persons who have similar functions. A commodity trading advisor shall make its anti-money laundering program available for inspection by FinCEN or the Commodity Futures Trading Commission upon request.

(c) The anti-money laundering program shall, at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the commodity trading advisor from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the BSA and this part;

(2) Provide for independent testing for compliance to be conducted by the commodity trading advisor's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–10841 Filed 5–2–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Investment Advisers

AGENCY: Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: FinCEN is proposing to amend its Bank Secrecy Act rules to require certain investment advisers that manage client assets to establish anti-money laundering programs, to establish minimum requirements for such programs, and to delegate its authority to examine certain investment advisers for compliance with such program requirements to the Securities and Exchange Commission.

DATES: Written comments may be submitted to FinCEN on or before July 7, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments may be sent to Internet address *regcomments@fincen.treas.gov* with the caption ''Attention: Section 352 Investment Adviser Rule Comments'' in the body of the text. Comments may be mailed to FinCEN, Section 352 Investment Adviser Rule Comments, P.O. Box 39, Vienna, VA 22183. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel (FinCEN), (703) 905–3590; Office of the General Counsel (Treasury), (202) 622–1927; or Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 5318(h)(2) authorizes the Secretary of the Treasury (Secretary), after consulting with the appropriate Federal functional regulator, which in the case of investment advisers is the Securities and Exchange Commission (SEC), to prescribe minimum standards for anti-money laundering programs. The Secretary has delegated the authority to administer the BSA to the Director of FinCEN. To date, FinCEN has issued interim final rules prescribing minimum anti-money laundering program requirements for numerous types of financial institutions,[1] has proposed rules for other financial institutions,[2] and is studying how to design such standards for numerous other types of financial institutions.

FinCEN is today proposing a similar rule for commodity trading advisors, which is published elsewhere in this issue of the **Federal Register**.[3]

II. Investment Advisers Determined To Be Financial Institutions

The BSA does not expressly enumerate investment advisers among the entities defined as financial institutions under sections 5312(a)(2) and (c)(1).[4] Nevertheless, the BSA

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[1] *Anti-Money Laundering Programs for Financial Institutions,* 67 FR 21110 (April 29, 2002); *Anti-Money Laundering Programs for Mutual Funds,* 67 FR 21117 (April 29, 2002); *Anti-Money Laundering Programs for Money Services Businesses,* 67 FR 21114 (April 29, 2002); *Anti-Money Laundering Programs for Operators of a Credit Card System,* 67 FR 21121 (April 29, 2002).

[2] *Anti-Money Laundering Programs for Unregistered Investment Companies,* 67 FR 60617 (Sept. 26, 2002); *Anti-Money Laundering Programs for Insurance Companies,* 67 FR 60625 (Sept. 26, 2002); *Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels,* 68 FR 8480 (Feb. 21, 2003).

[3] Commodity trading advisors, which are subject to regulation by the Commodity Futures Trading Commission (CFTC), were added to the statutory BSA list of ''financial institutions'' in section 321 of the Act.

[4] The BSA definition includes institutions that are already subject to federal regulation such as banks, savings associations, credit unions, securities broker-dealers, and futures commission merchants. Money services businesses (such as money transmitters and currency exchanges) are also defined as financial institutions under the BSA, and, like the former categories, under FinCEN's implementing regulations. The BSA definition also includes dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment bankers; investment companies; and commodity pool operators and

definition is extremely broad, listing numerous types of businesses, and section 5312(a)(2)(Y) authorizes the Secretary to include additional types of businesses within the BSA definition if he determines that they engage in any activity similar to, related to, or a substitute for any of the listed businesses. Because of the types of activities certain investment advisers engage in and the services they provide, FinCEN is proposing to exercise its authority to define these investment advisers as financial institutions solely for purposes of section 5318(h) and to require them to establish anti-money laundering programs.

An investment adviser is defined in the Investment Advisers Act of 1940 (Advisers Act) (15 U.S.C. 80b *et seq.*) as ''any person who, for compensation, engages in the business of advising others * * * as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or * * * issues * * * analyses or reports concerning securities,'' subject to certain exceptions.[5] Many investment advisers provide investment advice to clients who have granted the adviser the power to manage the assets in their accounts, frequently on a discretionary basis. As a result, these investment advisers engage in activities that are ''similar to, related to, or a substitute for'' financial services that are provided by other BSA financial institutions.

Advisers managing clients' assets work so closely with other BSA financial institutions—such as by directing broker-dealers to purchase or sell client securities or by directing banks to transfer client funds—that the advisers' activities are related to those of the other financial institutions. Advisers' services can be a substitute for products offered by investment companies or insurance companies, for example, when clients seek to have advisers manage their assets through other forms of pooled investment vehicles or through separate accounts. Some investment advisers offer asset management services that are similar to, and that may even compete directly with, asset management services provided by certain banks through their trust departments. FinCEN also notes that the close interrelationship between investment advisers and other financial institutions (such as securities broker-dealers, mutual funds, commodity trading advisors, and commodity pool operators) is further demonstrated by the fact that they are often jointly registered with, affiliated with, or sponsored by each other.

III. Money Laundering and Investment Advisers

Money laundering occurs when money from illegal activity is moved through the financial system to make it appear that the funds came from legitimate sources. Money laundering usually involves three stages, known as placement, layering, and integration. In the placement stage, cash or cash equivalents are placed into the financial system. Investment advisers rarely have occasion to receive currency from or disburse it to clients. Nevertheless, in some instances, FinCEN has received reports of suspicious activities indicating that clients may attempt to use investment advisers in the placement stage. These reports include attempts by clients to structure transactions with an investment adviser to avoid reports of currency transactions, [6] as well as attempts to fund accounts with fraudulent checks.

''Layering'' describes the distancing of illegal proceeds from their criminal source through the creation of complex layers of financial transactions. A money launderer could use its client account with an investment adviser as one of many accounts in a layering scheme, frequently transferring funds to the adviser for management and then withdrawing the funds or transferring them to accounts at other institutions. Layering could also involve establishing an advisory account in the name of a fictitious corporation or an entity designed to conceal the true owner. For example, FinCEN in one instance received reports of suspicious activity involving an investment advisory client who established an account under an alias for the family of a Colombian narcotics trafficker. Investment advisory firms could also be used for integrating illicit income into legitimate assets. ''Integration'' occurs when illegal funds previously placed into the financial system are made to appear to have been derived from a legitimate source. For example, proceeds from investments made on a client's behalf by an investment adviser would appear legitimate to any financial institution receiving such proceeds.

The crime of money laundering also encompasses the movement of funds to support terrorism or terrorist organizations.[7] These funds may be from illegitimate or legitimate sources. Even where the funds derive from legitimate sources, money launderers might attempt to use investment advisers to aid movement of the funds through the money laundering patterns described above, in order to disguise the identity of the originator of the funds.

Investment advisers in the United States today control over $21 trillion in assets.[8] Although advisers rarely hold financial assets themselves and even more rarely accept cash, they are often in a critical position of knowledge as to the movement of large amounts of financial assets through financial markets.[9] If some of these assets include the proceeds of illegal activities, or are intended to further such activities, an anti-money laundering program should help discover them. In some cases, an investment adviser may be the only person with a complete understanding of the source of invested assets, the nature of the clients, or the objectives for which the assets are invested. Other market participants may, for example, hold and trade assets in an account controlled by the adviser, but these parties often rely solely on an investment adviser's instructions and lack knowledge of the adviser's clients. In other cases, an adviser may be the only participant aware of the overall investment program of a client who may use multiple broker-dealers to trade securities in transactions that individually may not raise money laundering concerns.[10] As a result, FinCEN believes that investment advisers have an important role to play in preventing the use of their services for money laundering and the financing of terrorism.[11]

commodity trading advisors that are registered or required to register under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

[5] Advisers Act, Section 202(a)(11) (15 U.S.C. 80b–2(a)(11)).

[6] ''Structuring'' is described *infra* at note 25 and accompanying text.

[7] 18 U.S.C. 1956, 2339A, and 2339B.

[8] Information filed by investment advisers registered with the SEC shows that these advisers had assets under management of over $21 trillion as of February 2003.

[9] Rule amendments proposed by the SEC would generally prohibit an adviser from holding clients' funds or securities directly; instead, the adviser would have to maintain these assets in accounts with a broker-dealer, bank, or other qualified custodian. *Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Release No. 2044 (July 17, 2002) (67 FR 48579 (July 25, 2002)).

[10] 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or ''specified unlawful activity.'' Although the standard of knowledge required is ''actual knowledge,'' actual knowledge includes ''willful blindness.'' Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she ignored ''red flags'' that indicated illegality.

[11] Moreover, FinCEN is concerned that the failure of advisers to implement effective anti-money laundering programs may result in money launderers seeking their services to access financial

Continued

IV. Section-by-Section Analysis

A. Definition of Investment Adviser for Purposes of the Proposed Rule

The SEC regulates investment advisers under the Advisers Act. The proposed rule relies on terms and definitions used by the Advisers Act and in the SEC's regulations to define the scope of the rule.[12] Section 103.150(a) of the proposed rule defines two groups of advisers located within the United States required to have anti-money laundering programs.

The first group consists of advisers that (i) have a principal office and place of business in the U.S. (U.S. advisers), (ii) are registered with the SEC, and (iii) report to the SEC that they have assets under management.[13] This group includes advisers registered with the SEC that have either discretionary or non-discretionary authority to manage client assets.[14] It excludes, however, advisers that are not registered with the SEC because they are smaller, state-registered firms that have less than $30 million of assets under management, as well as advisers that are registered with the SEC but do not manage client assets.[15] Because these excluded firms, unlike many ''financial institutions'' such as banks or broker-dealers, do not accept funds or hold financial assets directly, and have relatively few (or no) assets under management, these firms are unlikely to play a significant role in money laundering.

The second group consists of U.S. advisers that are *not* registered with the SEC, but have $30 million or more of assets under management and are relying on the registration exemption provided by section 203(b)(3) of the Advisers Act (15 U.S.C. 80b–3(b)(3)) (unregistered advisers). Under section 203(b)(3), advisers that have fewer than 15 clients and do not hold themselves out generally to the public as investment advisers are exempted from SEC registration.[16] Many of the advisers that use this registration exemption may control substantial client assets, either because they have a few individual clients with very large accounts or because they advise certain types of pooled investment vehicles, such as limited partnerships.[17]

With respect to this second group of investment advisers, the proposed rule would exclude those entities that would qualify as unregistered advisers but that are otherwise required to have an anti-money laundering program under the BSA because they are dually registered as a financial institution in another capacity and are examined by a Federal functional regulator for compliance with the requirement in that other capacity.[18] This explicit exclusion will avoid potential duplicative anti-money laundering regulation of these financial institutions by the SEC and other Federal functional regulators and promote the efficient allocation of scarce government resources.

In some instances, investment advisers that would be subject to the proposed rule advise pooled investment vehicles that are themselves required to maintain anti-money laundering programs under BSA rules, such as mutual funds, or that are sponsored or administered by financial institutions subject to such requirements.[19] To prevent overlap and redundancy, the proposed rule would permit investment advisers covered by the rule to exclude from their anti-money laundering programs any investment vehicle they advise that is subject to an anti-money laundering program requirement under BSA rules.

B. The Anti-Money Laundering Programs

1. Individualized Program

Section 103.150(b) of the proposed rule would require each investment adviser subject to the proposed rule to develop and implement its own anti-money laundering program reasonably designed to prevent the firm from being used to launder money or finance terrorist activities and to achieve and monitor compliance with the other applicable requirements of the BSA and FinCEN's implementing regulations. Every program must incorporate four minimum requirements, discussed below, but each adviser will tailor its program to address the risks presented by the nature of its services and clients. In addition, each adviser may implement its program in a manner reasonably practicable in light of the firm's size and resources. For example, according to recent information filed by the approximately 7,750 investment advisers registered with the SEC, only ten percent of them reported that their firms had more than 50 employees, whereas nearly half reported having one to five employees. While FinCEN expects that large firms will adopt detailed procedures addressing the responsibilities of the individuals and departments involved in carrying out each aspect of the program, smaller firms may adopt procedures consistent

markets while avoiding detection by banks, broker-dealers, mutual funds, and other financial institutions that have adopted programs.

[12] This approach would permit advisers to determine easily whether they are subject to the proposed rule, and would permit both Treasury and the SEC to identify which advisers have obligations under the proposed rule.

[13] SEC-registered advisers report their assets under management in Part 1A of Form ADV (17 CFR 279.1), which is the investment adviser registration form. The item currently requiring this information is Item 5.F of Part 1A.

[14] When a client places its assets with an advisory firm for management, the client authorizes the advisory firm to buy or sell securities for the client's account, and the account itself is maintained with a broker-dealer, bank, or other custodian. However, many advisory firms, such as financial planners or pension consultants, do not manage clients' assets. While these investment advisers may recommend securities or asset allocations, their clients make their own arrangements to purchase and sell securities; in some cases, the adviser may not be told whether the client has acted on the firm's advice.

[15] Section 203A of the Advisers Act generally prohibits advisers with assets under management of less than $25 million from registering with the SEC. Primary responsibility for regulating these firms rests with state securities authorities. Under SEC rules, however, firms with between $25 and $30 million in assets under management may choose whether to register with the SEC or with the states, and certain other investment advisers—such as certain pension consultants—register with the SEC even though they may not manage $25 million in assets. 17 CFR 275.203A–1; 17 CFR 275.203A–2.

[16] Section 203(b)(3) exempts from registration any investment adviser who during the course of the preceding 12 months has had fewer than 15 clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any registered investment company or business development company that has elected to be regulated as such.

[17] An SEC rule permits the adviser to count the partnership or other pooled investment vehicle as a single client, rather than count each limited partner or other investor as a client. 17 CFR 275.203(b)(3)–1. As a result, the adviser may have only one or two pooled investment vehicle clients, yet manage tens or hundreds of millions of dollars. While some of these pooled investment vehicles may be subject to FinCEN's proposed rule requiring unregistered investment companies to implement anti-money laundering programs, these advisers may have other clients not subject to that rule. *See Anti-Money Laundering Programs for Unregistered Investment Companies,* 67 FR 60617 (Sept. 26, 2002) (UIC NPRM).

[18] For example, as noted above, FinCEN is proposing today a similar rule for commodity trading advisors. FinCEN is also considering requiring that commodity pool operators (which are also BSA financial institutions subject to regulation by the CFTC) establish and implement the anti-money laundering programs required pursuant to the UIC NPRM, *supra* note 17, for commodity pools that they operate.

[19] For example, an investment adviser may be adviser to a mutual fund, or adviser to a bank's common or collective trust fund. BSA rules obligate mutual funds and banks to maintain anti-money laundering programs to protect against attempted money laundering by their customers. *Anti-Money Laundering Programs for Mutual Funds,* 67 FR 21117 (April 29, 2002); *Anti-Money Laundering Programs for Financial Institutions,* 67 FR 21110 (April 29, 2002). An adviser may also act as adviser to other investment pools, such as an insurance company's separate accounts or certain unregistered investment companies, that will be similarly subject to anti-money laundering program rules under pending FinCEN proposals. *See, e.g., Anti-Money Laundering Programs for Insurance Companies,* 67 FR 60625 (Sept. 26, 2002); UIC NPRM, *supra* note 17.

with their simpler, centralized organizational structure.[20]

To assure that the requirement to have an anti-money laundering program receives the highest level of attention, the proposed rule would require that each investment adviser's program be approved in writing by the board of directors or trustees or, if it doesn't have one, by its sole proprietor, general partner, or other persons who have similar functions.[21] The four required elements of the anti-money laundering program are discussed below.

2. The Four Required Elements of Each Anti-Money Laundering Program

(1) *Establish and Implement Policies, Procedures, and Internal Controls Reasonably Designed to Prevent the Investment Adviser From Being Used to Launder Money or Finance Terrorist Activities, Including but not Limited to Achieving Compliance with Applicable Provisions of the BSA and FinCEN's Implementing Regulations.*

Each investment adviser subject to the proposed rule would be required to develop a written program reasonably designed to prevent the firm from being used to launder money or finance terrorist activities and to achieve compliance with applicable requirements of the BSA and FinCEN's implementing regulations. As described below, this would require each investment adviser to review the types of services it provides and the nature of its clients to identify its vulnerabilities to money laundering and terrorist financing activity. The adviser would then develop and implement procedures and controls that would reasonably address each vulnerability and assure compliance with these requirements, and periodically assess the effectiveness of its procedures and controls.

An adviser's vulnerabilities to money laundering and terrorist financing activity are minimal with respect to clients for whom the adviser does not manage assets. Many advisers that manage portfolios for some clients have other clients to whom the firm provides very different services, such as pension consulting, securities newsletters or research reports, or financial planning. Accordingly, in designing its anti-money laundering procedures, an adviser could exclude clients for whom the firm does not manage assets.

Advisers face higher vulnerability to money laundering when clients place their assets under management with the firm. An adviser's procedures for these clients would seek to identify unusual transactions whereby clients place funds under the firm's management through checks drawn on (or wire transfers made from) accounts of third parties with no family or business relationship to the client, or through numerous checks or transfers from one or more issuers or institutions. In addition, an adviser's procedures would identify unusual transactions upon the subsequent withdrawal of assets from management with the firm, such as payments in numerous separate monetary instruments, transfers to unrelated or numerous accounts,[22] or to accounts in countries in which drugs are known to be produced or other countries at high-risk for money laundering or terrorist financing.[23]

An adviser's vulnerability rises further with respect to clients who make frequent additions to or withdrawals from their advisory accounts with the firm. An adviser would need to establish procedures to identify which clients engage in such activity, and assess the reasonableness of the additions or withdrawals in light of the clients' investment objectives and the firm's existing knowledge of the clients' personal finances or business operations.

An investment adviser faces the highest degree of vulnerability when clients place or attempt to place assets under management in the form of cash, or require investment options or brokerage, banking, or other custodial arrangements that allow the client to remain anonymous to other intermediaries. The adviser would need to establish procedures to assess whether there are legitimate circumstances underlying the client's request before proceeding with the relationship.

An adviser's program should also take into account the extent to which the adviser provides investment advice to, and creates or administers, pooled investment vehicles, as well as whether the adviser provides advice to pooled investment vehicles that are created and administered by the adviser or by a third party. As discussed above, investment advisers to pooled investment vehicles that are subject to anti-money laundering program requirements under BSA rules may exclude the vehicles from their anti-money laundering programs. However, an investment adviser must include other pooled vehicles it advises in its anti-money laundering program, using different approaches depending on whether the adviser is also the entity creating or administering the pooled vehicle.

Advisers providing investment advice to pooled investment vehicles that are not subject to BSA anti-money laundering requirements, and that are created and administered by a third party, would have little or no information about the investors in the pooled vehicle or their transactions. In this situation, the adviser would need to establish procedures to assess whether the entity that created and administers the vehicle, or the nature of the vehicle itself, reduces the risk of money laundering. For example, an employee retirement savings plan sponsored by a public corporation that accepts assets only in the form of payroll deductions or rollovers from other similar plans presents no realistic opportunity for money laundering activity, whereas an offshore vehicle not itself subject to any anti-money laundering program requirement would present a more significant risk. The adviser's program would need to analyze the money laundering risks posed by a particular investment vehicle by using a risk-based evaluation of relevant factors including: the type of entity; its location; the statutory and regulatory regime of that location (*e.g.,* if the entity is organized

[20] The legislative history of the Act reflects that Congress intended that each financial institution should have the flexibility to tailor its program to fit its business, taking into account factors such as size, location, activities, and risks or vulnerabilities to money laundering, so long as the program meets the four minimum statutory requirements. This flexibility is designed to ensure that all firms subject to the Act, from the largest to the smallest, have in place policies and procedures appropriate to monitor for money laundering. *See* USA PATRIOT Act of 2001: Consideration of H.R. 3162 Before the Senate, 147 Cong. Rec. S10990–02 (October 25, 2001) (statement of Sen. Sarbanes); Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives, 147 Cong. Rec. H6938–39 (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act).

[21] The board's approval could be given at its first regularly scheduled meeting after the program is adopted.

[22] Securities account custodians typically handle the actual deposit and withdrawal of funds in a client's account. In most cases, these custodians are broker-dealers, banks, or other entities that are ''financial institutions'' under FinCEN's BSA rules. Commonly, the client selects and contracts for account services with the custodian and instructs the custodian to permit the adviser to trade securities in the account. In such cases, the custodian's personnel may have exclusive access to the information needed to assess whether the source or destination of funds transfers in and out of the account are unusual. If the adviser selects and retains the account custodian, however, the adviser should coordinate review of these transactions with the custodian, as is discussed in connection with service providers, below.

[23] *See, e.g., http://www.state.gov* for International Narcotics Control Reports evaluating the effectiveness of countries' controls against narcotics trafficking and for lists of state sponsors of terrorism, and *http://www.fincen.gov* for FinCEN Advisories identifying countries whose anti-money laundering regimes do not meet international standards.

or registered in a foreign jurisdiction, does the jurisdiction comply with the European Union anti-money laundering directives, and has the jurisdiction been identified by the Financial Action Task Force as non-cooperative); and the adviser's historical experience with the entity or the references of other financial institutions. As the entity's potential vulnerability to money laundering increases, the adviser's procedures would need to reasonably address these increased risks, such as by obtaining and reviewing information about the identity and transactions of the investors in the vehicle.

In contrast, if the adviser also creates or administers a pooled investment vehicle not subject to BSA anti-money laundering program requirements, then the adviser's program would need to address the investors in the vehicle under the same type of criteria as the adviser uses for non-pooled vehicle clients, as discussed above. If, however, any of the investors are themselves pooled investment vehicles (*e.g.,* hedge funds or pension funds), the adviser would need to address the money laundering risks posed by the pooled entity investing in the adviser's vehicle (and any other intermediary that may be involved), under the same type of criteria an adviser would use for pooled entities it advises directly, as described above.[24]

Anti-money laundering programs at larger firms would allocate the responsibility for carrying out these procedures among affected departments, managers, and employees, whereas implementation responsibilities at smaller firms would typically be more centralized. In either case, if the adviser needs to look to affiliated or unaffiliated service providers to evaluate some transactions or perform parts of its anti-money laundering program, it would be permissible to delegate the implementation and operation of appropriate elements of its program by contract. The investment adviser, however, would remain fully responsible for the effectiveness of its anti-money laundering program, as well as for ensuring that federal examiners are able to obtain information and records relating to the program and to inspect the third party for purposes of the program. Accordingly, the adviser would still be required to identify the particular procedures appropriate to address its vulnerability to money laundering and terrorist financing, and then undertake reasonable steps to assess whether the service provider would carry out such procedures effectively. For example, it would not be sufficient to simply obtain a certification from a service provider that the service provider ''has a satisfactory anti-money laundering program.''

Some investment advisers, such as advisers that are dually-registered as broker-dealers, may already have anti-money laundering programs in place. FinCEN does not require that such investment advisers establish multiple anti-money laundering programs. The same program may apply to an entity that functions as more than one type of financial institution, so long as the program is appropriately designed to address the different risks posed by the different aspects of the entity's business and satisfies each of the anti-money laundering program requirements to which it is subject in each of its capacities.

The adviser's anti-money laundering program should also be reasonably designed to ensure compliance with BSA requirements. The BSA currently requires investment advisers to report on Form 8300 the receipt of cash totaling more than $10,000 in one transaction or two or more related transactions.[25] In order to develop a compliant anti-money laundering program, the program should be reasonably designed to detect and report not only transactions required to be reported on Form 8300, but also to detect activity designed to evade such requirements. Such activity, commonly known as ''structuring,'' may involve making deposits into a trading or investment account of $10,000 or more with multiple money orders, travelers' checks, or cashier's checks or other bank checks, each with a face amount of less than $10,000. Such methods of payment may be indicative of money laundering, particularly when the payment instruments were obtained from different sources or the payments were made at different times on the same day or on consecutive days or close in time.

FinCEN is currently considering whether investment advisers should be subject to additional BSA requirements, including filing suspicious activity reports pursuant to section 5318(g) of the BSA and complying with accountholder identification and verification procedures pursuant to section 326 of the Act. If advisers become subject to additional requirements, they will need to update their compliance programs to include appropriate procedures, training, and testing functions. In addition, FinCEN encourages investment advisers to implement promptly procedures for voluntarily filing suspicious activity reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–566–3974).

(2) *Provide for Independent Testing of Compliance to be Conducted by Company Personnel or by a Qualified Outside Party.*

An investment adviser would be required to provide for testing of its program periodically, to assure that the program is functioning as designed. Personnel conducting the testing—whether a third party, an affiliate of the firm, or an employee of the firm—should have a working knowledge of applicable BSA requirements, but should not be the person designated to implement and monitor the program under requirement (3) below. The frequency of such a review would depend upon factors such as the size and complexity of the adviser's business and the extent to which its business model may be subject to a higher risk of money laundering than other business models. A written assessment or report should be a part of the review, and any recommendations resulting from such review should be promptly addressed.

(3) *Designate a Person or Persons Responsible for Implementing and Monitoring the Operations and Internal Controls of the Program.*

The investment adviser would be required to charge an individual (or group of individuals) with the responsibility for overseeing the anti-money laundering program. The person or group of persons should be competent and knowledgeable regarding applicable requirements and money laundering risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures. The person or group should also have adequate time and resources to carry out these oversight duties, taking into account the nature and complexity of the firm's program and their other responsibilities. In addition, a person responsible for

[24] *See* 67 FR 60617, 60621 (Sept. 26, 2002) (Treasury's UIC NPRM, *supra* note 17, provides for similar treatment for ''funds of hedge funds''), and 67 FR 21117, 21119–21120 (April 29, 2002) (Treasury's interim final rule requiring mutual funds to establish anti-money laundering programs provides for similar treatment for omnibus accounts).

[25] *See Financial Crimes Enforcement Network; Amendments to the Bank Secrecy Act Regulations—Requirement that Nonfinancial Trades or Businesses Report Certain Currency Transactions,* 66 FR 67679 (Dec. 31, 2001). The reporting requirement also covers cashier's checks, bank drafts, traveler's checks, or money orders having a face amount of not more than $10,000 received in certain retail sales or in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction.

overall supervision of the program should be an officer of the investment adviser.

(4) *Provide Ongoing Training for Appropriate Persons.*

Employee training is an integral part of an anti-money laundering program in any firm that has multiple employees involved in managing client assets. Employees of the adviser must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.[26] For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

C. Administration

The proposed rule includes a provision under which FinCEN would generally delegate examination authority to the SEC, to enable the SEC to examine investment advisers' compliance with the anti-money laundering program requirement. In addition, because certain investment advisers subject to the rule are not necessarily registered with the SEC or otherwise identifiable to FinCEN, the proposed rule contains a notice provision requiring the firms subject to the rule that are not SEC-registered to file a brief notice with FinCEN providing identifying information about the firm. Without a methodology for identifying these unregistered entities, there would be no way for FinCEN to assure that they are in compliance with the rule.[27]

V. Request for Comment

FinCEN requests comment on all elements of the proposed rule. FinCEN specifically requests comment on the proposed definition of ''investment adviser,'' whether it is appropriate to determine that investment advisers are financial institutions under the BSA and to require these investment advisers to implement anti-money laundering programs, and whether other categories of investment advisers should be covered by or excluded from the rule. FinCEN also requests comment regarding the proposed provisions designed to avoid imposing overlapping or duplicative regulation of investment advisers and other financial institutions that are (or are proposed to be) subject to anti-money laundering program requirements.

VI. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose significant burdens on those investment advisers covered by the rule because they are already subject to Form 8300 reporting and may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule. In addition, investment advisers subject to the proposed rule will not be compelled to obtain more sophisticated legal or accounting advice than that already required to run their businesses.

Finally, FinCEN believes that the flexibility incorporated into the proposed rule will permit each investment adviser to tailor its anti-money laundering program to fit its own size and needs. In this regard, FinCEN believes that expenditures associated with establishing and implementing an anti-money laundering program will be commensurate with the size of an investment adviser. If an investment adviser is small, the burden to comply with the proposed rule should be *de minimis*.

VII. Executive Order 12866

It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VIII. Paperwork Reduction Act

The collections of information contained in this proposed rule are being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collections of information should be received by July 7, 2003.

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

The collections of information in this proposed rule are in 31 CFR 103.150(b) and (d). The information will be used by federal agencies to verify compliance by investment advisers with the provisions of 31 CFR 103.150. The collections of information are mandatory.

Description of Recordkeepers and Reporters: Investment advisers as defined in 31 CFR 103.150(a).

Estimated Number of Recordkeepers: 10,000.

Estimated Average Annual Burden Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 10,000 hours.

Estimated Number of Respondents (Notice Requirement): 3,000.

Estimated Average Annual Burden Per Respondent: The estimated average burden associated with the notice requirement in this proposed rule is 15 minutes per respondent.

Estimated Total Annual Reporting Burden: 750 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the collections of information are necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the

[26] Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the Office of Foreign Assets Control and other government lists of suspected terrorists and terrorist organizations.

[27] The Secretary of the Treasury is authorized to promulgate this notice requirement under the BSA. For a discussion of this authority, *see* UIC NPRM, *supra* note 17.

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collections of information on investment advisers, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegation (Government agencies), Investment advisers, Counter money laundering, Counter-terrorism, Currency, Reporting and recordkeeping requirements, Securities.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 321, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart E, revise § 103.56(b)(6) to read as follows:

§ 103.56 Enforcement.

* * * * *

(b) * * *

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities; investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80–1 *et seq.*); and investment advisers as that term is defined in § 103.150(a) of this part;

* * * * *

3. In subpart I, add new § 103.150 to read as follows:

§ 103.150 Anti-money laundering programs for investment advisers.

(a) *Definition.* For purposes of this section, the term *investment adviser* means a person whose principal office and place of business is located in the United States that:

(1) Is registered or required to be registered with the Securities and Exchange Commission (SEC) under section 203(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) and reports or is required to report in Part 1A of SEC Form ADV (*see* 17 CFR 279.1) that it has assets under management; or

(2) Is exempt from registration with the SEC pursuant to section 203(b)(3) of the Investment Advisers Act (15 U.S.C. 80b–3(b)(3)) and that would be required, if it were registered with the SEC, to report in Part 1A of SEC Form ADV that it has $30 million or more of assets under management, unless such person is otherwise required to have an anti-money laundering program pursuant to another provision of this subpart, and is subject to examination by a Federal functional regulator.

(b) *Anti-money laundering program required.* Effective [the date that is 90 days after the date of publication of the final rule in the **Federal Register**]:

(1) Each investment adviser shall develop and implement a written anti-money laundering program reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) (BSA) and this part. The investment adviser may exclude from its anti-money laundering program any pooled investment vehicle it advises that is subject to an anti-money laundering program requirement under another provision of this subpart.

(2) Each investment adviser's anti-money laundering program must be approved in writing by its board of directors or trustees, or if it does not have one, by its sole proprietor, general partner, or other persons who have similar functions. An investment adviser shall make its anti-money laundering program available for inspection by FinCEN or the SEC upon request.

(c) *Minimum requirements.* The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the BSA and this part;

(2) Provide for independent testing for compliance to be conducted by the investment adviser's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

(d) *Notice requirement for unregistered advisers.* Each investment adviser described in paragraph (a)(2) of this section (unregistered adviser) must provide information to FinCEN as required by this paragraph (d).

(1) Each unregistered adviser must file with FinCEN a Notice described in Appendix D of this subpart. Completed notices may be submitted to FinCEN:

(i) By accessing FinCEN's Internet Web site, *http://www.fincen.gov,* and entering the appropriate information as directed; or

(ii) By mail to: FinCEN, P.O. Box 39, Vienna, VA 22183.

(2) The Notice required by paragraph (d)(1) of this section must be filed not later than 90 days after the unregistered adviser first becomes subject to this section, and thereafter annually not later than 90 days after the end of the fiscal year of the unregistered adviser. If an unregistered adviser subsequently terminates its advisory business or ceases to be subject to this section, the unregistered adviser must so advise FinCEN not later than 90 days thereafter indicating such termination or cessation.

(3) Each unregistered adviser must include the following information in the Notice required by paragraph (d)(1) of this section:

(i) The name of the unregistered adviser, including all family or complex names, trade names, and doing-business-as names;

(ii) The complete street address, telephone number, and, if applicable, the e-mail address of the unregistered adviser;

(iii) The name, telephone number, and, if applicable, e-mail address of the person or persons designated pursuant to paragraph (c)(3) of this section;

(iv) The total number of clients of the unregistered adviser; and

(v) The total assets under management of the unregistered adviser, as determined under the instructions to SEC Form ADV, Part 1A, as of the end of the adviser's most recent fiscal year.

(4) An unregistered adviser must file a revised Notice with FinCEN if there is a change in any of the information required by paragraph (d)(3)(i), (ii), or (iii) of this section. The revised Notice must be filed in accordance with paragraph (d)(1) of this section not later than 30 days after the date of any such change.

4. Add appendix D to subpart I of part 103 to read as follows:

Appendix D to Subpart I of Part 103 Unregistered Investment Advisers

Notice for Purposes of 31 CFR 103.150(d)

Complete either PART I or PART II of this Notice, as appropriate.

Notice is given, on behalf of (insert all names of unregistered adviser) _____ that: _____

Part I

(1) The investment adviser is an unregistered adviser described in 31 CFR 103.150(a)(2)

(2) The address, e-mail address (if applicable), and telephone number of the unregistered adviser are as follows:
ADDRESS:

E-MAIL ADDRESS (if applicable):

TELEPHONE NUMBER:

(3) The name, e-mail address (if applicable), and telephone number of the designated anti-money laundering program compliance officer of the unregistered adviser are as follows:
NAME:
E-MAIL ADDRESS:
TELEPHONE NUMBER:

(4) The total number of clients of the unregistered adviser:

(5) The total amount of assets under management of the unregistered adviser, as determined under the instructions to SEC Form ADV, Part 1A, as of the end of the adviser's most recent fiscal year:

Part II

The unregistered adviser is terminating its advisory business or is otherwise no longer an unregistered adviser described in 31 CFR 103.150(a)(2) as of the following date:

SUBMITTED BY:

Name:

Title:

Date:

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–10840 Filed 5–2–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA44

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations; Definition of Futures Commission Merchants and Introducing Brokers in Commodities as Financial Institutions; Requirement That Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The proposed amendments would add futures commission merchants and introducing brokers in commodities to the regulatory definition of ''financial institution'' and would require that they report suspicious transactions to FinCEN. This is the most recent proposal to be issued by FinCEN concerning the reporting of suspicious transactions by the major categories of financial institutions operating in the United States as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Comments on the proposed rules must be received by July 7, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov,* with a caption, in the body of the text, ''Attention: NPRM—Suspicious Transaction Reporting—Futures Commission Merchants and Introducing Brokers in Commodities.'' Comments also may be submitted by paper mail to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: NPRM: Suspicious Transaction Reporting—Futures Commission Merchants and Introducing Brokers in Commodities. Comments should be sent by one method only. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Alma M. Angotti, Senior Enforcement Counsel, and Judith R. Starr, Chief Counsel, FinCEN, at (703) 905–3590; David Vogt, Associate Director, and Donald Carbaugh, Chief, Depository Institutions, Office of Regulatory Programs, FinCEN, (202) 354–6400.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Statutory Provisions

The Bank Secrecy Act, Pub. L. 91–508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332 (''BSA''), authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The BSA defines the term ''financial institution'' to include, among other broad categories of institutions, any ''broker or dealer in securities or commodities.''[2] Section 321(b) of the USA Patriot Act amended the BSA to expressly include in the definition of ''financial institution'' futures commission merchants (''FCMs'') that are registered, or required to register, with the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange Act (''CEA'').[3]

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[4] to require financial institutions to report suspicious transactions. Subsection (g)(1) states generally:

The Secretary may require any financial institution, and any director, officer,

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (''USA Patriot Act''), Pub. L. 107–56.

[2] 31 U.S.C. 5312(a)(2)(H). The Secretary has clarified that the term ''broker or dealer in commodities'' in the BSA includes introducing brokers in commodities (''IB–Cs''). *See* 67 FR 21110, 21111 n.5 (April 29, 2002) (anti-money laundering programs for certain financial institutions); 67 FR 48328, 48329 n.2 (July 23, 2002) (customer identification procedures for FCMs and IB–Cs).

[3] 7 U.S.C. 1 *et seq.* Section 321(b) also provided that the term ''financial institution'' includes any commodity pool operator (''CPO'') and any commodity trading advisor (''CTA'') registered, or required to register, under the CEA. *See* 31 U.S.C. 5312(c). FinCEN has proposed rules that require unregistered investment companies, including commodity pools, to have anti-money laundering programs (''AMLPs''). FinCEN also intends to propose rules requiring CTAs to have AMLPs. A requisite element of these AMLPs is the requirement to have policies, procedures, and controls that are reasonably designed to ensure compliance with the BSA and its implementing regulations.

[4] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4)(B) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [5] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.''

In the USA Patriot Act, Congress specifically addressed the issue of suspicious transaction reporting by FCMs. Section 356(b) of the USA Patriot Act provides that Treasury, in consultation with the CFTC, may issue a regulation under 31 U.S.C. 5318(g) requiring FCMs to report suspicious transactions. Treasury has decided that FCMs and IB–Cs are among the class of financial institutions from which suspicious transaction reporting should be required. FinCEN consulted extensively with the CFTC in the development of the proposed and amended rules.

B. Potential Money Laundering through FCMs and IB–Cs

FCMs engage in the offer and sale of futures contracts and commodity options on behalf of customers. While FCMs may accept money, securities, or property from customers in connection with such offers and sales, such money, securities, and property typically are in the form of checks or wire transfers. FCMs do not normally receive or disburse currency to customers, and FCMs generally do not accept money orders or other monetary instruments from customers for deposit into the customers' futures or options accounts.

IB–Cs also receive orders for futures and options transactions, but IB–Cs may not accept money, securities, or property from their customers.[6] Instead, FCMs maintain customer funds on behalf of an IB–C's customers and physically transmit or cause to be transmitted payments to margin, guarantee, secure, transfer, adjust, or settle futures and options transactions. Thus, all funds relating to introduced accounts are held with an FCM, and account statements reflecting such transactions must be issued by the FCM. Nevertheless, both FCMs and IB–Cs facilitate transfers or transmittals of funds for their customers.

Money laundering may occur through an FCM or IB–C, as it can occur through all categories of financial institutions.[7] One way in which money laundering can be effected through an FCM or IB–C is through wash or other fictitious transactions that violate Section 4c(a)(2) of the CEA.[8] In a wash transaction, a trader may engage in equal and opposite buy and sell transactions at the same or similar prices with the result that there is little or no change in the trader's financial position, and thus little or no market risk.[9] To conceal wash trades, the trader may use multiple trading accounts established in the trader's own name or the name of an affiliated person or may enlist confederates to assist the trader in the illegal venture. To move or transfer funds offshore, the trader may engage in wash transactions through the use of multiple trading accounts or accounts established in various jurisdictions. Traders also may use a futures account, not for trading purposes, but rather solely as a vehicle for moving funds where they can be used to fund terrorist activity and other criminal activities.

FinCEN has received reports of suspicious activity through futures accounts that have included structuring, unusual currency deposits (amounts not commensurate with business), unusual currency withdrawals, and reports of large cash deposits followed immediately by the wiring of the funds to foreign countries. In addition, as FCMs and IB–Cs play an important role in the global economy, they could be used to facilitate the layering and integration of illicit funds.

Through their contacts with customers and their involvement in the order flow process, both FCMs and IB–Cs may be well situated to detect and deter suspicious transactions. Suspicious transactions may occur at the account-opening stage, in the order flow process, or at any time after an account is opened. Suspicious transactions may occur in an FCM's back office, on the trading floor, or through trading conducted on an electronic trading platform.

C. Application of the BSA to FCMs and IB–Cs

Notwithstanding the BSA's definition of ''financial institution,'' application of the BSA to a business largely depends upon whether the business is included in the definition of ''financial institution'' at 31 CFR 103.11(n) of the BSA regulations, which currently does not include FCMs or IB–Cs. Thus, FCMs and IB–Cs have not been subject to the general BSA reporting and recordkeeping requirements. Although those BSA requirements have been inapplicable to FCMs and IB–Cs, certain BSA requirements have applied to these businesses since the BSA regulations were first promulgated. In particular, FCMs and IB–Cs have been subject since 1972 to the requirement to report the transportation of currency or monetary instruments into or out of the United States [10] and the requirement to report

[5] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[6] In certain circumstances, an IB–C may accept a check made payable to an FCM for deposit in a qualifying account or for forwarding to the FCM. *See* 17 CFR 1.57(c).

[7] *See, e.g., United States* v. *Kneeland,* 148 F.3d 6 (1st Cir. 1998) (funds obtained in connection with a fraudulent scheme to solicit ''advance fees'' for purported loan transactions transferred from corporation to defendant's personal bank accounts, from there to defendant's brokerage account, from brokerage account to commodities broker, and finally, from commodities broker back to personal bank account).

[8] 7 U.S.C. 6c(a)(2).

[9] *See, e.g., In re Collins* [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,902 (CFTC April 14, 1986) (''the common denominator of the specific abuses prohibited in section 4c(a)—wash sales, cross trades, and accommodation trades—and the central characteristic of the general category of fictitious sales, is the use of trading techniques that give the appearance of submitting trades to the open market while negating the price or price competition incidental to such a market.''). *See also In re Bear Stearns & Co.,* [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,663 (CFTC January 25, 1991) (although in a wash transaction a trader gives the appearance of making independent decisions to buy and sell, the trader's actual intention is to ''create a financial and position nullity extraneous to the price discovery and risk-shifting functions of the futures markets.'')

[10] Under 31 CFR 103.23, persons transporting (or causing to be transported) currency or other monetary instruments of more than $10,000 into or out of the United States must make a report to Treasury using the Form 4790, Report of

foreign financial accounts,[11] as both of these requirements apply to persons without regard to whether they are financial institutions. In addition, certain FCMs have been subject to suspicious transaction reporting since 1996. In particular, FCMs that are affiliates or subsidiaries of banks or bank holding companies generally have been required to report suspicious transactions by virtue of rules issued by the federal bank supervisory agencies (the Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), the Office of Thrift Supervision (''OTS''), and the National Credit Union Administration (''NCUA'')).[12] The proposed suspicious activity rule, discussed below, applies to all FCMs and IB–Cs, without regard to whether they are affiliates or subsidiaries of banks or bank holding companies.[13]

The release accompanying the issuance of a suspicious activity reporting rule for securities brokers or dealers (''BDs'')[14] clarified that dual registrants—persons registered both with the CFTC as FCMs[15] and with the Securities and Exchange Commission (''SEC'') as BDs[16]—are not required to file SARs under that rule with respect to transactions that are subject to the CFTC's exclusive jurisdiction. This was intended to preserve the status quo while FinCEN consulted with the CFTC about the development of a SAR requirement for FCMs. Upon the effectiveness of a rule covering all FCMs, the need for such a carve out will be mooted. The same form (Form SAR–SF)[17] will be used for reporting by members of both the securities and futures industries. So long as an entity required to report under either the BD or FCM rule files the form for a given suspicious transaction, it will be in compliance with its SAR obligation.

FCMs and IB–Cs also are subject to new provisions added to the BSA by the USA Patriot Act. For example, FCMs and IB–Cs are subject to the anti-money laundering program rules of 31 U.S.C. 5318(h).[18] Further, FinCEN has issued a joint notice of proposed rulemaking with the CFTC that would require FCMs and IB–Cs to establish procedures to verify the identity of customers opening accounts, maintain records of the information used to verify customer identity, and consult lists of known or suspected terrorists and terrorist organizations.[19]

D. The Registration and Regulation of FCMs and IB–Cs

An FCM is defined in the CEA as an individual, association, partnership, corporation, or trust that is engaged in soliciting or accepting orders and funds for the purchase or sale of a commodity for future delivery on or subject to the rules of a contract market or derivatives transaction execution facility (''DTEF'').[20] An IB–C is similarly defined,[21] except that an IB–C may not accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts. The CEA requires FCMs and IB–Cs to register pursuant to the procedures of Section 4f(a)(1) of the CEA.[22] As of December 31, 2002, there were 168 FCMs and 1,423 IB–Cs (domestic and foreign) that had registered with the CFTC pursuant to this provision.

The Commodity Futures Modernization Act of 2000 (''CFMA'')[23] amended both the CEA and the Exchange Act to remove a long-standing statutory prohibition on the trading of security futures products (''SFPs'').[24] A person may not effect SFP transactions unless the person registers with both the SEC and the CFTC. The CFMA amended both the CEA and the Exchange Act to permit ''notice registration'' procedures for persons that are required to register with the CFTC or the SEC solely because they are effecting SFP transactions. Under these notice registration procedures with respect to SFPs, an FCM or IB–C can register with the SEC as a ''Notice BD,''[25] and a BD can register with the CFTC as a ''Notice FCM'' or ''Notice IB–C,''[26] simply by filing a notice with the other regulator. Notice BDs are exempt from certain substantive provisions of the Exchange Act,[27] and Notice FCMs and Notice IB–Cs are exempt from certain substantive provisions of the CEA.[28] These streamlined notice registration provisions allow FCMs, IB–Cs, and securities BDs to participate in SFP business without being subject to conflicting and/or duplicative regulation. The CFMA further amended the Exchange Act to clarify that an FCM or IB–C that also is a Notice BD to effect SFP transactions is not subject to routine periodic examination by the SEC.[29]

The regulation of the futures industry in general, and of FCMs and IB–Cs in particular, relies on both the CFTC and the designated self-regulatory organizations (''DSROs''). At present, the DSROs consist of any board of trade that is designated as a contract market,[30] and any futures association registered,

International Transportation of Currency or Monetary Instruments (''CMIR'').

[11] Under 31 CFR 103.24, persons subject to the jurisdiction of the United States must make a report to Treasury if the person has a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country. The report is made on Form TD F 90.22–1, Report of Foreign Bank and Financial Accounts (''FBAR'').

[12] In April 1996, banks, thrifts, and other banking organizations became subject to a requirement to report suspicious transactions pursuant to final rules issued by FinCEN, under the authority contained in 31 U.S.C. 5318(g). In collaboration with FinCEN, the federal bank supervisors concurrently issued suspicious transaction reporting rules under their own authority. *See* 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). Certain bank supervisory agency rules apply to banks, non-depository institution affiliates and subsidiaries of banks and bank holding companies (including FCMs), and bank holding companies (including bank holding companies that are themselves FCMs). *See, e.g.*, 12 CFR 225.4(f), which subjects non-bank subsidiaries of bank holding companies to the suspicious transaction reporting requirements of Regulation H of the Board of Governors at 12 CFR 208.62.

[13] On December 24, 2002, Federal Reserve staff issued a supervisory letter stating that a nonbank subsidiary of a bank holding company or state member bank subject to the Federal Reserve's SAR rules will be deemed to be in compliance with such rules if it makes reports of suspicious transactions under a separately applicable Treasury regulation. The supervisory letter also provides that the Federal Reserve Board is expected to revise the relevant regulations in early 2003. *See* SR 02–24 (available at *http://www.federalreserve.gov/boarddocs/SRLETTERS/2002/sr0224.htm).*

[14] 67 FR 44048 (July 1, 2002).

[15] Section 4f(a)(1) of the CEA, 7 U.S.C. 6f(a)(1).

[16] Section 15(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), 15 U.S.C. 78o(b)(1).

[17] *See infra* note 44.

[18] Regulations implementing this provision were issued April 29, 2002. *See* 67 FR 21110.

[19] *See* 67 FR 48328 (July 23, 2002).

[20] 7 U.S.C. 1a(20).

[21] 7 U.S.C. 1a(23) (defining the term ''introducing broker'').

[22] 7 U.S.C. 6d(a)(1).

[23] Pub. L. 103–556, 114 Stat. 2763 (December 21, 2000).

[24] A ''security future'' is defined in the CEA and the Exchange Act as a contract of sale for future delivery on a single security or narrow-based security index (7 U.S.C. 1a(31) and 15 U.S.C. 78c(a)(55)), and an SFP is defined as a security future or any put, call, straddle, option, or privilege on any security future (7 U.S.C. 1a(32) and 15 U.S.C. 78c(a)(56)). The CFMA amended the Exchange Act definitions of ''security'' and ''equity security'' to include security futures (15 U.S.C. 78c(a)(1) and 15 U.S.C. 78c(a)(11), respectively). As a result of these amendments, an SFP is both a security and a futures contract (or option thereon) and is thus subject to the jurisdiction of both the CFTC and the SEC.

[25] Section 15b(11) of the Exchange Act, 15 U.S.C. 78*o*(b)(11).

[26] Section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

[27] *See* 15 U.S.C. 78*o*(b)(11)(b).

[28] *See* 7 U.S.C. 4f(a)(4)(A).

[29] Section 17(b) of the Exchange Act, 15 U.S.C. 78q(b)(4)(A).

[30] Section 5 of the CEA, 7 U.S.C. 7.

under the CEA.[31] To date, the National Futures Association (''NFA'') is the only registered futures association.[32]

II. Specific Provisions

A. 103.11(ii)—Meaning of Terms

1. Definitions of Futures Commission Merchant and Introducing Broker-Commodities

The definition of ''financial institution'' in 31 CFR 103.11(n) would be amended to add FCMs and IB–Cs as these terms are proposed to be defined in paragraphs (zz) and (aaa), respectively. Adding FCMs and IB–Cs to the definition of financial institution is intended to affirm the Secretary's view that such firms are among the class of financial institutions that present possible money laundering risks and thus should be subject to regulations designed to deter and detect money laundering and other criminal activities.

Including FCMs and IB–Cs in the definition of financial institution under the BSA regulations will subject these businesses to the general BSA recordkeeping and record retention rules.[33] Most of the records specifically identified in the BSA regulations are documents that FCMs and IB–Cs must obtain and retain pursuant to existing CFTC regulations. In addition, FCMs and IB–Cs will be required to report currency transactions under 31 CFR 103.22 and maintain records associated with such reports under 103.28, as well as comply with the funds transfer rule requirements of 103.33(f). As a result, once the final rule based on this notice of proposed rulemaking is implemented, FCMs and IB–Cs will no longer be subject to cash reporting under 31 U.S.C. 5331.[34]

Proposed paragraphs (zz) and (aaa) set forth the definitions of FCM and IB-C, respectively. These terms would be defined as any person registered or required to be registered as an FCM or IB–C with the CFTC,[35] but would exclude BDs that have notice registered with the CFTC as FCMs or IB–Cs for the sole purpose of effecting SFP transactions. For these persons, FinCEN believes that the BSA rules of the primary federal supervisory agency for such entities should apply, and that authority to examine for compliance with those rules must remain with the agency with which the entities are primarily registered. Thus, a BD that is notice registered with the CFTC must comply with the BSA rules applicable to BDs, and further, such BD will be examined for BSA compliance by the SEC. A parallel change also is being made to the definition of ''broker or dealer in securities'' in the BSA regulations. Thus, an FCM or IB–C that is notice registered with the SEC must comply with the BSA rules applicable to FCMs and IB–Cs, and further, such FCM or IB–C shall be examined for BSA compliance by the CFTC and the relevant DSROs.

With respect to those entities that are dual registrants with both the CFTC and the SEC for purposes of futures and securities transactions other than SFPs, FinCEN intends for this rule to have the same effect as 31 CFR 103.19(ii), which is the rule that requires suspicious activity reporting for BDs. That is, dual registrants who are in compliance with the suspicious activity reporting requirements for BDs under 31 CFR 103.19(ii) also shall be deemed to be in compliance with this proposed rule, and dual registrants who are in compliance with this rule shall be deemed to be in compliance with 31 CFR 103.19(ii). In this way, it is anticipated that dual registrants will not be subject to different or conflicting suspicious activity reporting requirements for the various aspects of their businesses.

2. Definitions of Transaction, Commodity, Contract of Sale, and Option

The definition of ''transaction'' in the regulations under the BSA, which is set forth in paragraph (ii), conforms generally to the definition Congress added to title 18 when it criminalized money laundering in 1986.[36] The term is broad and is intended to reach all of the various types of transactions that may occur at a financial institution. Amended paragraph (ii) would specifically add futures transactions, *i.e.,* transactions involving any contract of sale of a commodity for future delivery, any option on any contract of sale for future delivery, and any option on a commodity, to the list of transactions subject to BSA requirements. The definition is not restricted to transactions conducted on a designated contract market or a DTEF.[37]

Proposed paragraphs (xx), (yy), and (bbb) set forth definitions of ''commodity,'' ''contract of sale,'' and ''option on a commodity.'' These are definitions based on Sections 1a(4), 1a(7), and 1a(26), respectively, in the CEA.[38]

B. 103.17—Reports by FCMs and IB–Cs of Suspicious Transactions

1. *General.* Proposed section 103.17 would require FCMs and IB–Cs to report suspicious transactions that are conducted or attempted by, at, or through an FCM or IB–C and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable under this proposal and 31 U.S.C. 5318(g) whether or not they involve currency.[39] The proposal also contains language designed to encourage the reporting of transactions that appear relevant to possible violations of law or regulation even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $5,000 threshold in the rule.

Proposed paragraph (a)(2) would require reporting if the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part) is one of four classes of transactions (described more fully below) requiring reporting. The ''knows, suspects, or has reason to suspect'' standard incorporates a concept of due diligence in the reporting requirement.

The first class of transactions requiring reporting, described in proposed paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise

[31] Section 17 of the CEA, 7 U.S.C. 21.

[32] As a result of amendments made to the CEA by the CFMA, however, a DTEF may serve as DSRO. To date, there are no registered DTEFs.

[33] *See* 31 CFR 103.33 and 103.38.

[34] *See* 31 U.S.C. 5331(c) and 26 U.S.C. 6050I(c).

[35] There are two types of IB–Cs, guaranteed and non-guaranteed. A guaranteed IB is one that elects to operate pursuant to a written guarantee agreement with an FCM instead of independently meeting its own capital requirements. *See, e.g.,* 17 CFR 1.17(a)(2)(ii). An independent IB–C, by contrast, is one that elects to meet its own capital requirements. Both types of IB–Cs engage in the offer and sale of futures contracts and commodity options on behalf of customers and facilitate transfers or transmittals of funds for their customers. Thus, they present the same or similar money laundering risks, and Treasury sees no reason to draw a distinction between IB–Cs that are guaranteed and those that are not. Therefore, all IB–Cs would be covered by the proposed rule as IB–Cs.

[36] *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986), codified at 18 U.S.C. 1956.

[37] Thus, for example, the term ''transaction'' would include any transaction by an FCM or IB–C in a foreign currency futures contract, any option on any foreign currency futures contract, or any option on a foreign currency that occurs on an off-exchange basis. *See* 7 U.S.C. 2(c)(1)–(2).

[38] 7 U.S.C. 1a(4), 1a(7) and 1a(26), respectively.

[39] Many currency transactions are not indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (*see* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions (for example, funds transfers) can indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

funds or assets derived from illegal activity. The second class of transactions, described in proposed paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third class of transactions, described in proposed paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the FCM or IB–C knows of no reasonable explanation after examining the available facts relating to the transaction and the parties. The fourth class of transactions, described in proposed paragraph (a)(2)(iv), involves the use of the FCM or IB–C to facilitate a criminal transaction.

A determination as to whether a report is required must be based on all the facts and circumstances relating to the transaction and customer in question. Different fact patterns may lead to different determinations. In some cases, the facts of the transaction may indicate the need to report. For example, frequent and large-scale usage of wire transfers, including wire transfers to or from locations outside of the United States, from an account with only nominal futures activity may be indicative of suspicious activity. In other instances, the transaction or activity itself may be sufficiently suspicious to warrant reporting, notwithstanding the facts. Thus, if a customer engages in wash transactions or other fictitious or non-bona fide transactions that violate the CEA, a suspicious activity report must be filed.[40] Similarly, the fact that a customer unreasonably refuses to provide information necessary for the FCM or IB–C to make required reports, retain records as required, identify or verify the identity of a customer, or otherwise comply with the BSA; provides information that the FCM or IB–C determines to be false; or seeks to change or cancel a transaction after such person is informed of currency transaction reporting or information verification or recordkeeping requirements relevant to the transaction, would all indicate that a suspicious activity report should be filed. As the proposed rule would make clear, the FCM or IB–C may not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.

In other situations, a more involved analysis and judgment may be needed to determine whether a transaction is suspicious within the meaning of the proposed rule. Transactions that raise the need for such judgments may include, for example: (i) Transmission or receipt of funds transfers without normal identifying information or in a manner that indicates an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or of the beneficiary to whom the funds are sent; (ii) repeated pattern activity by the customer, such as where the customer repeatedly makes unexplainable, frequent deposits or withdrawals ; or (iii) repeated use of an account as a temporary resting place for funds from multiple sources without a clear business purpose. The judgments involved also will extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction or activity that removes it from the suspicious category.

An FCM may carry, and an IB–C may introduce, intermediated accounts including omnibus accounts and accounts for collective investment vehicles such as commodity pools. In such circumstances, the FCM and IB–C may have little or no contact with or information about the ultimate beneficial owners of such accounts. FinCEN has proposed anti-money laundering program rules for commodity pools, and is today also proposing such rules CTAs. Monitoring for suspicious transactions is an integral part of such programs. These independent suspicious activity reporting obligations of intermediaries such as CTAs, however, do not reduce the obligation on an FCM or IB–C imposed by this proposed rule to monitor transactions based on the facts and circumstances with which it is presented, in order to determine if a transaction is suspicious. In addition, omnibus accounts maintained for certain foreign financial institutions fall within the definition of ''correspondent account'' under section 312 of the USA Patriot Act and as such are subject to due diligence, and possibly enhanced due diligence, requirements under that section of that Act and the implementing regulations.[41]

The means of commerce and the techniques of money launderers are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. FinCEN will continue its dialogue with the CFTC, NFA, the futures exchanges, and the futures industry itself about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

2. *Reporting Threshold.* FinCEN is aware of industry concern that the $5,000 threshold would operate mechanically to require FCMs and IB–Cs to establish programs to examine every transaction occurring at or above the threshold level. The suspicious transaction reporting rules, however, are not intended to operate (and indeed cannot properly operate) in a mechanical fashion. Rather, the suspicious transaction reporting requirements are intended to function in such a way as to have financial institutions evaluate customer activity and relationships for money laundering risks.[42]

3. *Transactions Involving Both an FCM and an IB–C.* Proposed paragraph (a)(3) provides that the obligation to identify and report properly a suspicious transaction rests with each FCM and IB–C involved in the transaction. While the proposed rule sets forth the general principle regarding the obligation to report when a transaction involves both an FCM and an IB–C, the proposed rule also provides that only one report needs to be filed with FinCEN as long as the report that is filed contains all the relevant facts concerning the transaction. This provision is intended to avoid duplicative and redundant reporting. FinCEN expects that in these situations, an FCM and IB–C will consult with each other in preparing the report to ensure that only one accurate and complete report is filed concerning a particular transaction.

4. *Filing Procedures.* Proposed paragraph (b) sets forth the filing procedures to be followed by an FCM or IB–C making reports of suspicious transactions. Within 30 days after an FCM or IB–C becomes aware of a suspicious transaction, the business must report the transaction by

[40] As discussed below, however, proposed paragraph (c)(1)(ii) would provide an exception from the suspicious reporting requirements for violations of the CEA by the FCM, IB–C, or any of its officers, directors, employees, or associated persons that are reported to the CFTC, a registered futures association or any ''registered entity,'' as that term is defined in 7 U.S.C. 1a(29).

[41] *See* 67 FR 37736 (May 30, 2002) (proposed rule) and 67 FR 48348 (July 23, 2002) (interim final rule).

[42] Thus, for example, sizable futures transactions conducted for a well established commodity pool operated in accordance with Part 4 of the CFTC's regulations may require less scrutiny than a futures transaction conducted for an individual customer located in a jurisdiction that has been identified as a non-cooperative country or territory by the Financial Action Task Force on Money Laundering.

completing a SAR–SF and filing it in a central location to be determined by FinCEN.[43] The proposed rule also makes special provision for situations that require immediate attention, such as ongoing money laundering schemes or terrorist financing. In that event, the FCM or IB–C would have to notify immediately, by telephone, an appropriate law enforcement authority in addition to filing a SAR–SF. The proposed rule also permits, but does not require, FCMs and IB–Cs to notify the CFTC in addition to contacting law enforcement and filing a SAR–SF.[44]

5. *Exceptions.* Proposed paragraph (c) sets forth two exceptions to the reporting requirement that would apply to an FCM or IB–C. A report would not have to be filed to report a robbery or burglary that is reported to law enforcement. A report also would not have to be filed concerning possible violations of the CEA, the rules promulgated by the CFTC, or the rules of any registered futures association or registered entity by an employee or other associated person of an FCM or IB–C, provided that such violations are reported to the CFTC, a registered futures association, or a registered entity. This exception would not encompass reports of BSA violations made to the CFTC or a registered futures association.

6. *Retention of Records.* Proposed paragraph (d) would require FCMs and IB–Cs to maintain a copy of any SAR–SF that is filed with FinCEN and all original related supporting documentation for a period of five years from the date of filing. Nothing in the proposed rule modifies, limits, or supersedes section 101 of the Electronic Records in Global and National Commerce Act,[45] and thus an FCM or IB–C may make and maintain records either as originals or in electronic format as permitted under existing CFTC rules.[46] Regardless, the FCM or IB–C would have to make the supporting documentation available to FinCEN, the CFTC, NFA, any appropriate law enforcement agency, and, as explained below, any registered futures association or registered entity as permitted in paragraph (g), upon request.

7. *Non-Disclosure.* Proposed paragraph (e) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the proposed rule or is filed voluntarily).[47] Thus, the paragraph specifically prohibits persons filing a SAR–SF from making any disclosure either about the report or the supporting documentation unless the disclosure is made to law enforcement, relevant regulatory agencies such as the CFTC, or a DSRO.

8. *Safe Harbor from Civil Liability.* Proposed paragraph (f) incorporates the BSA's statutory protection from civil liability for making or filing a report of a suspicious transaction or for failing to disclose the fact that a report has been made or filed. The specific reference to arbitration reflects the clarification provided in the USA Patriot Act that the safe harbor for suspicious transaction reporting would apply in arbitration proceedings. Because some disputes in the futures industry are resolved under a reparations procedure provided for by the CEA,[48] paragraph (f) proposes to clarify that the safe harbor also applies in reparations proceedings. FinCEN intends to work with the CFTC, the DSROs, and industry representatives to ensure that appropriate educational materials are delivered to compliance and litigation personnel.

It must be noted that, while the proposal reiterates and clarifies the broad statutory protection from liability for making reports of suspicious transactions and for failing to disclose the fact of such reporting, the regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection. The prohibition on disclosure (other than as required under the proposed rule) applies regardless of any protection from liability. This means, for instance, that during an arbitration or reparations proceeding, an FCM or IB–C would not be permitted to provide a copy of a SAR–SF, or disclose the fact that one had been filed, to any participant in the proceeding, including as applicable, the arbitrator, judgment officer, or administrative law judge.

9. *Examination.* Proposed paragraph (g) notes that compliance with the obligation to report suspicious transactions will be examined, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations. This paragraph also clarifies that an FCM or IB–C must provide access to any SAR–SF that it has filed, along with any supporting documentation, to the CFTC and any registered futures association or registered entity that has authority to examine the institution.

10. *Proposed Effective Date.* Proposed paragraph (h) provides that the new suspicious transaction reporting requirements would be effective 180 days after the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**.

C. 103.33—Records To Be Made and Retained by Financial Institutions

The addition of FCMs and IB–Cs to the ''financial institution'' definition also will make such persons subject to the recordkeeping and reporting requirements set forth in section 103.33. This paragraph requires specific records concerning transfers and transmittals of funds in the amount of $3,000 or more. The proposed amendments to paragraphs (e)(6)(i) and (f)(6)(i) of Section 103.33 would set forth exceptions for any transfers or transmittals of funds involving either an FCM or an IB–C. The proposed inclusion of FCMs and IB–Cs within the exceptions is intended to provide parallel treatment for records required to be made and kept by banks, BDs, FCMs, and IB–Cs.

D. 103.56—Examination

Under the current BSA delegation framework, the Internal Revenue Service is responsible for examining all financial institutions (except for BDs) that are not examined by the federal bank supervisory agencies. As a result, the Internal Revenue Service is the agency charged with examining FCMs and IB–Cs for compliance with the BSA requirements currently applicable to them.[49] This proposed rule would expand the scope of the BSA rules applicable to FCMs and IB–Cs by including them in the regulatory definition of ''financial institution.'' FinCEN believes that it therefore is appropriate to shift the responsibility for examining FCMs and IB–Cs under the BSA, from the Internal Revenue Service to the CFTC. Thus, 31 CFR 103.56, which sets forth delegations of BSA authority, is proposed to be

[43] A draft of the SAR–SF was published for comment in the **Federal Register** on August 5, 2002; 67 FR 50751 (August 5, 2002); the form became final on December 26, 2002 and is available on FinCEN's Web site at *http://www.fincen.gov.* Once the proposed rule is finalized, FinCEN intends to conform the instructions to the SAR–SF to specifically address FCM responsibilities under the rule.

[44] In addition, the proposed rule reminds FCMs and IB–Cs of FinCEN's Financial Institutions Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. FCMs and IB–Cs reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–SF to the extent required by the proposed rule.

[45] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act).

[46] *See, e.g.,* 17 CFR 1.4 and 1.31.

[47] *See* 31 U.S.C. 5318(g)(2).

[48] *See* 7 U.S.C. 18 and 7 CFR Part 12.

[49] NFA, however, also examines FCMs and IB–Cs for compliance with the AML program requirement, based on NFA Compliance Rule 2–9(c).

amended to provide the CFTC with examination authority with respect to FCMs and IB–Cs for BSA compliance.

III. Submission of Comments

All comments will be available for public inspection and copying, and no material in any comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') [50] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules proposed today would affect FCMs and IB–Cs. The CFTC has established certain definitions of ''small entities'' to be used by the CFTC in evaluating the impact of its rules on such entities in accordance with the RFA.[51] The CFTC previously has determined that FCMs are not small entities for the purpose of the RFA.[52] Therefore, the requirements of the RFA do not apply to those entities.

With respect to IB–Cs, the CFTC has stated that it would evaluate within the context of a particular proposal whether all or some affected IB–Cs should be considered small entities, and if so, that it would analyze the economic impact on them of any rule.[53] All IB–Cs, including small IB–Cs, would be affected by the proposed rules. As noted above, the inclusion of IB–Cs within the ''financial institution'' definition in the BSA regulations would make IB–Cs subject to all of the same requirements that apply to other financial institutions, such as banks and introducing and clearing BDs. Nevertheless, FinCEN does not believe that these requirements modify the existing obligations of IB–Cs, since the transactional information required to be made and retained under the proposed rules would be information that already is required to be made and retained in the ordinary course of an IB–C's business.

Concerning the filing of suspicious activity reports by IB–Cs, FinCEN does not believe that the economic impact of the proposed rule will be significant. Due to mandatory provisions of the USA Patriot Act [54] and obligations imposed by the NFA,[55] FCMs and IB–Cs already are obligated to establish AMLPs that include policies, procedures, and internal controls that are reasonably designed to assure compliance with the BSA and the implementing regulations. A set of systems and procedures designed to detect and require reporting of suspicious activity complements these existing program requirements. As the NFA's interpretive notice to Compliance Rule 2–9(c) makes clear, an IB–C may tailor its program based on the type of its business, the size and complexity of its operations, the breadth and scope of its customer base, the number of firm employees, and the firm's resources.

Based on the foregoing, FinCEN does not believe the proposed rules will have a significant economic impact on a substantial number of small entities. Accordingly, FinCEN hereby certifies, pursuant to Section 3(a) of the RFA,[56] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

VII. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (''PRA'').[57] Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*) with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by July 7, 2003.

In accordance with the PRA [58] and its implementing regulations,[59] the following information concerning the collection of information as required by the proposed rules [60] is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that the proposed suspicious activity reporting requirements, if adopted as proposed, would result in the annual filing of a total of 1,591 SAR–SFs by FCMs and IB–Cs. This result is an estimate based on the size o; the current FCM and IB–C community.

Description of Respondents: FCMs and IB–Cs that are or are required to be registered with the CFTC, excluding notice-registered FCMs and IB–Cs.

Estimated Number of Respondents: 1,591 (168 FCMs and 1423 IB–Cs).

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.17 will be reflected in the burden of the Form, SAR–SF. The recordkeeping burden of 31 CFR 103.17 is estimated as an average of four hours per form, which is based on the estimate for BDs.

Estimate of Total Annual Recordkeeping Burden on Respondents: 6,364 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN'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; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

[50] 5 U.S.C. 601 *et seq.*

[51] 47 FR 18618 (April 30, 1982).

[52] *Id.* at 18619–20.

[53] 47 FR 18618, 18618–18620 (April 30, 1982).

[54] 31 U.S.C. 5318(h).

[55] NFA Compliance Rule 2–9(c).

[56] 5 U.S.C. 605(b).

[57] 44 U.S.C. 3507(d).

[58] 44 U.S.C. 3506(c)(2)(A).

[59] 5 CFR part 1320.

[60] 31 CFR 103.17.

In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (a) any additional costs associated with reporting; and (b) any additional costs associated with recordkeeping.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Brokers, Commodity futures, Currency, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is amended to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

2. Section 103.11 is amended by revising paragraph (f), adding paragraphs (n)(8) and (n)(9), revising paragraph (ii)(1), and adding paragraphs (xx), (yy), (zz), (aaa), and (bbb) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(f) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

* * * * *

(n) * * *

(8) A futures commission merchant;

(9) An introducing broker in commodities.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase, or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

(xx) *Commodity.* Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(4).

(yy) *Contract of sale.* Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(zz) *Futures commission merchant.* Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(aaa) *Introducing broker-commodities.* Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(bbb) *Option on a commodity.* Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

3. Section 103.17 is added to read as follows:

§ 103.17 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General.* (1) Every futures commission merchant (''FCM'') and introducing broker in commodities (''IB–C'') within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB–C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB–C from the responsibility of complying with any other reporting requirements imposed by the Commodity Futures Trading Commission (''CFTC'') or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (''CEA''), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB–C, it involves or aggregates funds or other assets of at least $5,000, and the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB–C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB–C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB–C involved in the transaction, provided that no more than one report is required to be filed by the FCM and IB–C involved in the particular transaction (as long as the report filed contains all relevant facts).

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report—Securities and Futures Industry (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the

reporting FCM or IB–C of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB–C may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB–C should immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–SF. FCMs and IB–Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The FCM or IB–C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions.* (1) An FCM or IB–C is not required to file a SAR–SF to report—

(i) A robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB–C or any of its officers, directors, employees, or associated persons, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity. This exception does not apply to a report of a violation of the BSA and its implementing regulations.

(2) An FCM or IB–C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section.

(d) *Retention of records.* An FCM or IB–C shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the FCM or IB–C, and shall be deemed to have been filed with the SAR–SF. An FCM or IB–C shall make all supporting documentation available to FinCEN, the CFTC, any other appropriate law enforcement agency or regulatory agency, and for purposes of paragraph (g) of this section, to any registered futures association or registered entity, upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR–SF or the information contained in a SAR–SF, except where such disclosure is requested by FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, a registered futures association or registered entity, shall decline to produce the SAR–SF or to provide any information that would disclose that a SAR–SF has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* An FCM or IB–C, and any director, officer, employee, or agent of such FCM or IB–C, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration or reparations proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the BSA. Reports filed under this section shall be made available to the CFTC and any registered futures association or registered entity examining an FCM or IB–C for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the BSA or of this part.

(h) *Effective date.* This section applies to transactions occurring after [date that is 180 days after the publication in the **Federal Register** of a final rule based on this notice of proposed rulemaking].

4. Section 103.33 is amended by redesignating paragraphs (e)(6)(i)(E), (F), and (G) as paragraphs (e)(6)(i)(G), (H), and (I), respectively; adding new paragraphs (e)(6)(i)(E) and (F); redesignating paragraphs (f)(6)(i)(E), (F), and (G) as paragraphs (f)(6)(i)(G), (H), and (I), respectively, and adding new paragraphs (f)(6)(i)(E) and (F) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

* * * * *

(f) * * *

(6) * * *

(i) * * *

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

* * * * *

5. Section 103.56 is amended by revising paragraph (b)(8) and adding a new paragraph (b)(9) to read as follows:

§ 103.56 Enforcement.

* * * * *

(b) * * *

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.

* * * * *

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–10839 Filed 5–2–03; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN152–1b; FRL–7481–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to volatile organic compound (VOC) regulations in 326 Indiana Administrative Code (IAC) 8–1–2. Indiana submitted a request for this State Implementation Plan (SIP) revision on October 21, 2002 and January 10, 2003. These regulations affect miscellaneous metal coating operations performing dip or flow coating. One revision is that dip and flow coating operators may now use a rolling 30-day average to meet VOC content limits. This replaces a daily compliance requirement. EPA has determined that the extended averaging period is more practical for these sources because of the difficulties associated with intermittently adding solvent and the higher transfer efficiency associated with dip and flow coating operations. Solvent is intermittently added to the coating tank to maintain proper viscosity. Dip and flow coating generally has a higher transfer efficiency, which results in lower emissions, than spray coating. Indiana also added new equivalent emission limits for dip and flow coating, and made some additional, minor revisions. The requested revisions will aid dip and flow coating sources. Dip and flow coating uses less coating compared to spray coating, lowering total emissions. By providing alternative compliance options, dip and flow coating sources do not have to switch to spray coating to be able to demonstrate compliance.

DATES: The EPA must receive written comments by June 4, 2003.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

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I. What actions are the EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Actions Are the EPA Taking Today?

The EPA is proposing to approve revisions to 326 IAC 8–1–2. The revised rule includes a new compliance method for dip coating and flow coating operations. Prior to these revisions, dip and flow coating facilities were required to use daily averaging to meet VOC content limits. The revised rules allow for calculating the VOC content on a 30-day rolling average basis for dip or flow coating only. The extended averaging period is more practical for these sources because of the difficulties associated with intermittently adding solvent and the higher transfer efficiency associated with dip and flow coating operations. Solvent is intermittently added to the coating tank to maintain proper viscosity. Dip and flow coating generally has a higher transfer efficiency than spray coating, which results in lower VOC emissions.

Indiana also added new equivalent emission limits at 326 IAC 8–1–2(a)(9)(A) for dip and flow coating operations. Equivalent emission limits are expressed in terms of mass VOC per volume of coating solids.

Indiana also made several minor revisions to 326 IAC 8–1–2. Most of these revisions are simple rewording or adding a word or phrase for clarity to portions of the rule.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register.**

Dated: April 2, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–10998 Filed 5–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ58–254, FRL–7493–6]

Approval and Promulgation of Implementation Plans; New Jersey; Revised Motor Vehicle Emissions Inventories for 1996, 2005, and 2007 and Motor Vehicle Emissions Budgets for 2005 and 2007 Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is proposing approval of New Jersey's: revised 1996, 2005, and 2007 motor vehicle emission inventories and 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6; modified date for submittal of the State's mid-course review; and updated general conformity emissions budgets for McGuire Air Force Base. The intended effect of this action is to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in the New York-Northern New Jersey-Long Island nonattainment area (NAA) and the Philadelphia-Wilmington-Trenton NAA.

DATES: Comments must be received on or before June 4, 2003. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: All comments should be addressed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, and New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: This notice is being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a state submission before it has been formally adopted and submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

New Jersey held a public hearing on its proposed SIP revision on March 14, 2003. If New Jersey's proposed SIP revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will take final action on the State's plan consistent with this proposal and any submitted comments. Before EPA can approve this SIP revision, New Jersey must adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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1. Background

In November of 1999, EPA issued two memoranda [1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard [2] benefits into their SIPs and motor vehicle emissions budgets (''budgets''). Although these memoranda primarily targeted certain serious and severe ozone NAAs, EPA has implemented this policy in all other areas that have made use of federal Tier 2 benefits in air quality plans from EPA's April 2000 MOBILE5 guidance, ''MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5.'' All states whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to make a commitment to revise and resubmit their budgets within either 1 or 2 years of the final release of MOBILE6 in order to gain SIP approval.

On April 26, 2000, New Jersey submitted a revision to the 1-hr Ozone Attainment Demonstration SIP for the New Jersey portions of the two severe ozone NAAs—the New York-Northern New Jersey-Long Island Area and the Philadelphia-Wilmington-Trenton Area. For purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey NAA and the Trenton NAA. This SIP revision included, among other things, revised budgets using interim MOBILE5-based estimates of the Tier 2 standards and an enforceable commitment to revise the attainment demonstration using the MOBILE6 model, including budgets, within one year of the release of the model. Additional information on EPA's final approval of New Jersey's April 26, 2000 submittal can be found in the February 4, 2002 **Federal Register** (67 FR 5152).

EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Thus, the effective date of that **Federal Register** notice constituted the start of the 1 year time period for which New Jersey was required to revise its 1-Hour Ozone Attainment Demonstration SIP using the MOBILE6 model. New Jersey was required to submit this SIP revision to EPA by January 29, 2003.

2. What Is MOBILE6?

MOBILE is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. MOBILE calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs.

MOBILE is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's SIP and transportation conformity requirements.

MOBILE6 is the first major update of the MOBILE model since 1993. The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6 is the first major revision to MOBILE since MOBILE5a was released in 1993.

3. What Is the Purpose and Content of New Jersey's Submittal?

To address its enforceable commitment made in the April 26, 2000 Attainment Demonstration SIP revision, the State submitted a proposed SIP revision on January 31, 2003 (hereinafter referred to as the January 31, 2003 submittal) which revises the 1996, 2005, and 2007 motor vehicle emissions inventories and the 2005 and 2007 motor vehicle emissions budgets using the MOBILE6 model. The January 31, 2003 submittal demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the rate of progress requirements and projected attainment of the 1-hour ozone NAAQS for the Northern New Jersey NAA and Trenton NAA.

Also included as a part of the January 31, 2003 submittal, New Jersey proposes to modify the planned date for submitting its mid-course review to December 31, 2004 and to update the general conformity emissions budgets for McGuire Air Force Base.

4. What Are the Revised MOBILE6 Inventories?

Table 1 below summarizes the revised motor vehicle emissions inventories statewide and by nonattainment area in tons per summer day (tpd). These revised inventories were developed using the latest planning assumptions, including 1999 vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures. EPA is proposing to approve these revised 1996, 2005 and 2007 motor vehicle emissions inventories. While the primary focus of this proposed rulemaking is the Northern New Jersey and Trenton NAAs, New Jersey has also revised the motor vehicle emissions inventories for the Atlantic City ozone

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

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

NAA and the New Jersey portion of the Allentown-Bethlehem-Easton ozone NAA due to their inclusion in the overall motor vehicle emissions budgets. For the Atlantic City and Allentown NAAs, the most recent three years of data continue to demonstrate attainment of the 1-hour ozone standard. However, EPA has not yet received redesignation requests for these areas.

TABLE 1.—NEW JERSEY'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

NAA area	1996		2005		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Atlantic City	24.21	29.96	14.63	22.07	[1]	[1]
Northern New Jersey	320.22	356.46	156.37	237.17	134.00	186.93
Trenton	102.69	130.47	50.48	77.72	[1]	[1]
Allentown	9.29	16.79	5.59	12.89	4.77	10.25
State Total	456.42	533.67	227.08	349.85	[1]	[1]

[1] Not applicable.

5. Are the Revised MOBILE6 Inventories Consistent With New Jersey's 1-Hour Attainment Demonstration?

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' [3] and ''Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas.'' [4] Consistent with this policy guidance, New Jersey included in the January 31, 2003 submittal a relative reduction comparison to show that its 1-Hour Ozone Attainment Demonstration SIP continues to demonstrate attainment using revised MOBILE6 inventories for the Northern New Jersey NAA and the Trenton NAA. New Jersey's attainment demonstration used photochemical grid modeling supplemented with weight of evidence. As such, the State's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 inventories with the previously approved (67 FR 5152) MOBILE5 inventories for the Northern New Jersey NAA and the Trenton NAA to determine if attainment will still be predicted by the established attainment dates. Specifically, the State calculated the relative reductions (expressed as percent reductions) in ozone precursors between the 1996 base year and attainment year inventory, both MOBILE5-based. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1996 base year and attainment year inventories. It should be noted that the latest planning assumptions were used in modeling for the State's relative reduction comparison.

New Jersey's relative reduction comparison shows that for the Northern New Jersey NAA the percent reduction of VOC and NO_X emissions achieved in the revised MOBILE6 inventories is higher than the percent reduction calculated with MOBILE5, thus the required emission reductions needed to attain the 1-hour ozone NAAQS are achieved, and the SIP continues to demonstrate attainment. For the Trenton NAA, the percent reduction of VOC emissions achieved in the revised MOBILE6 inventories is higher than the percent reduction calculated with MOBILE5, however the percent reduction of NO_X emissions achieved in the revised MOBILE6 inventories is lower than the percent reduction calculated with MOBILE5, thus a slight NO_X shortfall is indicated. New Jersey has previously demonstrated in its Phase I Ozone SIP, approved by EPA on April 23, 1999 (64 FR 19913), that VOC or NO_X emission reductions are equally valuable towards attaining the 1-hour ozone standard. Therefore, New Jersey substituted excess VOC emission reductions for NO_X emission reductions, as allowed for under Section 182(c)(2)(C) of the Clean Air Act. To make such an equivalency demonstration, the State converted the percentage changes for VOC and NO_X to +2.46 and −1.44 tons per day, respectively. Based on the emission inventories, New Jersey has determined for the Trenton NAA that approximately 1.04 tons of VOC emissions equals 1 ton of NO_X emissions, as the emissions relate to their potential to form ozone. Consistent with EPA's policy on substitution of ozone precursor emission reductions, New Jersey increased the NO_X reductions and decreased VOC reductions by their equivalent amounts, resulting in offsetting effects with respect to ozone formation. Thus, the required emission reductions needed to attain the 1-hour ozone NAAQS are achieved for the Trenton NAA, and the SIP continues to demonstrate attainment.

EPA's policy guidance also required the State to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the January 31, 2003 submittal was developed. New Jersey reviewed the growth and control strategy assumptions for non-motor vehicle sources, and concluded that these assumptions continue to be valid for the 1-hour Ozone Attainment Demonstration.

New Jersey's January 31, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment dates of 2007 for the Northern New Jersey NAA and 2005 for the Trenton NAA.

6. Are New Jersey's Motor Vehicle Emissions Budgets Approvable?

Table 2 below summarizes New Jersey's revised budgets contained in the January 31, 2003 submittal. These budgets were developed using the latest planning assumptions, including 1999 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. For the South Jersey Transportation Planning Organization (SJTPO) and Delaware Valley Regional Planning Commission (DVRPC) the 2005 budgets are revised attainment year budgets. For

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

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

the North Jersey Transportation Planning Authority (NJTPA) the 2005 budgets are revised budgets based on the Reasonable Further Progress (RFP) Plans, while the 2007 budgets are revised attainment year budgets. EPA is proposing to approve all of these budgets.

Concurrent with this notice of proposed rulemaking, EPA is completing the adequacy review process on the revised 2005 attainment budgets for SJTPO and DVRPC and the revised 2007 attainment budgets for NJTPA. EPA began the 30-day comment period for these budgets on March 14, 2003 by posting a notice on EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.* In accordance with the ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' [5] EPA will issue its adequacy determination, including a response to comments, by posting it on the conformity Web site, and will also subsequently announce the determination in the **Federal Register**. The revised 2005 and 2007 attainment budgets will apply for conformity purposes once EPA issues its adequacy determination. It should be noted that EPA's adequacy determination will only be for the revised attainment year budgets, and not for the revised RFP budgets. This is consistent with EPA's approval of the previous MOBILE5 budgets (67 FR 5152), which limited the adequacy process to only the revised attainment year budgets. The revised 2005 RFP budgets for NJTPA will not be available for use in conformity determinations until after EPA publishes a final rulemaking on the January 31, 2003 submittal.

TABLE 2.—NEW JERSEY MOTOR VEHICLE EMISSIONS BUDGETS

Transportation planning area	2005		2007	NO_X (tpd)
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	
North Jersey Transportation Planning Authority (NJTPA)	161.97	250.05	138.77	197.19
South Jersey Transportation Planning Organization (SJTPO)	22.12	36.36	[1]	[1]
Delaware Valley Regional Planning Commission (DVRPC)	42.99	63.44	[1]	[1]

[1] Not applicable, since the attainment year is 2005.

Also included as part of the January 31, 2003 submittal, New Jersey is proposing to update the general conformity emissions budgets for the McGuire Air Force Base, previously approved by EPA in the February 4, 2002 **Federal Register** (67 FR 5152). Due to McGuire Air Force Base's vital status in the national defense and need to accommodate additional aircraft in 2005, New Jersey is proposing a change to the 2005 emissions budgets. The year 2005 NO_X budget is being increased by 200 tons per year and the VOC budget is being decreased by 208 tons per year. New Jersey is proposing this change consistent with EPA's policy on substitution of ozone precursor emission reductions. Based on the emission inventories, New Jersey has determined for the Trenton NAA that approximately 1 ton per year of NO_X emissions equals 1.04 tons per year of VOC emissions, as the emissions relate to their potential to form ozone. Thus, increasing NO_X and decreasing VOC by their equivalent amounts results in offsetting effects with respect to ozone formation. Table 3 below summarizes the revised general conformity budgets. EPA is proposing to approve the revised 2005 general conformity emissions budgets.

TABLE 3.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSIONS BUDGETS

	Previously approved budgets		New budgets	
	VOC tons/year	NO_X tons/year	VOC tons/year	NO_X tons/year
1990 Baseline	1,112	1,038	1,112	1,038
1996	1,186	1,107	1,186	1,107
1999	1,223	1,142	1,223	1,142
2002	1,405	875	1,405	875
2005[1]	1,406	884	1,198	1,084

[1] 2005 budgets updated such that the increase in NO_X is offset by a decrease in VOC, resulting in no expected net increase in ozone formation.

7. When Will New Jersey Submit Its Mid-Course Review?

On September 12, 2001, New Jersey submitted a mid-course review analysis which showed a continued downward trend in both the number of violations of the 1-hour ozone standard and the measured ozone concentrations. EPA found, however, that several more years of monitored data and implementation of the Regional NO_X Program were needed before a true mid-course review of the attainment demonstration could be made. Therefore, on February 4, 2002 (67 FR 5152), EPA approved New Jersey's further commitment to perform a mid-course review and submit the results to EPA by December 31, 2003.

Due to challenges by upwind states of EPA's Regional NO_X Program, the benefit of these upwind NO_X reductions will not be fully realized until late 2003. Therefore, EPA has allowed states to revise their mid-course commitments to provide for the review no later than December 31, 2004. In order to be consistent with surrounding states and to include the benefit of the Regional NO_X Program in its mid-course review, New Jersey revised its commitment to

[5] Memorandum, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' issued May 14, 1999. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

perform a mid-course review to December 31, 2004. EPA proposes to approve this revised commitment.

8. Summary of Conclusions and Proposed Action

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP.

EPA is proposing to approve New Jersey's proposed SIP revision submitted on January 31, 2003. This submittal revises New Jersey's 1996, 2005, and 2007 motor vehicle emission inventories and 2005 and 2007 motor vehicle emissions budgets using MOBILE6, modifies the planned date to complete the State's mid-course review to December 31, 2004, and updates the general conformity emissions budgets for McGuire Air Force Base. New Jersey has demonstrated that its revised 1-Hour Attainment Demonstration SIP for the Northern New Jersey NAA and the Trenton NAA continues to demonstrate attainment with the revised MOBILE6 inventories.

9. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 22, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–10999 Filed 5–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–7488–7]

Underground Injection Control Program—Revision of Underground Injection Control Requirements for Class I Municipal Wells in Florida; Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: On July 7, 2000, the Environmental Protection Agency (EPA) proposed revisions to the Underground Injection Control (UIC) regulations that would allow for continued wastewater injection by existing Class I municipal wells that have caused or may cause the movement of fluid into or between underground sources of drinking water (USDWs) in specific areas of South Florida. The revisions would provide owners and operators of such wells with an alternative for compliance with the existing UIC regulations, which prohibit such fluid movement, by allowing them to continue using their wells provided the injection does not endanger USDWs. Also in 2000, in a separate but related initiative, Congress directed EPA to conduct a relative risk assessment of four management options for treated municipal wastewater in South Florida: deep (Class I municipal) well injection, ocean disposal, surface discharge, and aquifer recharge. A separate document in today's **Federal Register** announces the availability and summarizes the findings of this relative risk assessment required by Congress. In this notice of data availability, EPA solicits public comment on how information on deep (Class I municipal) well injection in the relative risk assessment should inform the Agency's action on the July 7, 2000, proposed rule.

DATES: Comments on this notice of data availability must be in writing and either postmarked or received by the docket by July 7, 2003.

ADDRESSES: Send written comments to: Nancy H. Marsh, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960. Comments may be submitted

electronically to *marsh.nancy@epa.gov*. For additional information see Additional Docket Information in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: For inquiries, contact Nancy H. Marsh, Ground Water & UIC Section, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960 (phone: 404–562–9450; E-mail: *marsh.nancy@epa.gov*) or Howard Beard, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, EPA East, 1200 Pennsylvania Ave., NW., Mail Code 4606M, Washington, DC, 20460 (phone: 202–564–3874; E-mail: *beard.howard@epa.gov*) or contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. eastern daylight-saving time.

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I. General Information

A. Who Are Regulated Entities?

This notice is limited in application to the owners and/or operators of existing deep (Class I) underground injection wells that inject domestic wastewater effluent in specific counties in Florida. The counties are: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. Regulated categories and entities include:

Category	Examples of entities
Municipalities and Local Government	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.
Private	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated by this action. To determine whether your injection well might be regulated, you should carefully examine the applicability criteria in 40 CFR 146.15 of the July 7, 2000, proposed revisions to the Class I UIC regulations (65 FR 42234). If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Additional Docket Information

When submitting written comments (see **ADDRESSES** section) please submit an original and three copies of your comments and enclosures (including any references). The record is available for inspection from 8 a.m. to 3:30 p.m. Eastern daylight-saving time, Monday through Friday, excluding legal holidays, at the Environmental Protection Agency, Region 4 Library (9th Floor), Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303–8960. For information on how to access Docket materials, please call 404–562–8190 and refer to the Florida UIC docket.

C. Will There Be Public Meetings?

EPA plans to have public meetings in Florida during the comment period. EPA will announce the dates, times and locations of those public meetings in a subsequent **Federal Register** document.

II. Background

A. Definition of Class I Municipal Wells

Class I injection wells are wells that inject fluids beneath the lowermost formation containing, within one-quarter mile of a well bore, a USDW (40 CFR 144.6(a)). Class I wells can be used to inject hazardous, industrial, or municipal wastes. Class I municipal wells inject treated wastewater from publicly or privately owned and operated facilities that treat domestic wastewater, which is principally derived from dwellings, business buildings, and institutions. Domestic wastewater is commonly referred to as sanitary wastewater or sewage. Treated wastewater from industrial facilities, often controlled through pretreatment standards, may also be found in this wastewater. Currently, Class I municipal wells are located only in the State of Florida.

B. Proposed Rule for Class I Municipal Wells in Florida

EPA has established minimum requirements for Class I municipal wells and other underground injection activities through a series of UIC regulations at 40 CFR parts 144 through 147, developed under the authority of the Safe Drinking Water Act (SDWA). These regulations ensure that Class I municipal wells will not endanger USDWs by prohibiting the movement of any contaminant into USDWs.

On July 7, 2000, EPA proposed revisions to the UIC regulations that would allow continued wastewater injection by existing Class I municipal wells that have caused or may cause movement of contaminants into USDWs in specific areas of Florida (65 FR 42234). Continued injection would be allowed only if owners or operators meet certain additional requirements that provide adequate protection for USDWs. If new requirements are not promulgated, owners and/or operators of wells affected by the proposal would

be required to close their wells and adopt different wastewater disposal practices, which could consist of surface water disposal, ocean outfall, and/or reuse. Use of these alternative disposal practices would likely require the construction of facilities with advanced wastewater treatment, nutrient removal, and high-level disinfection.

EPA proposed two primary options for the additional requirements: Option 1—Facilities must provide advanced wastewater treatment and high-level disinfection with a demonstration that the injectate will not cause a USDW to exceed any national primary drinking water regulations in 40 CFR part 141 and other health-based standards (*e.g.,* Federal or State health advisories approved by the UIC Program Director, if a national primary drinking water regulation is not available for specific pollutants); and Option 2—Facilities must conduct an in-depth hydrogeologic demonstration that the injection operation would not cause fluids that will migrate into the USDW to exceed any national primary drinking water regulations in 40 CFR part 141 and other health-based standards and, if the demonstration is not successful, must provide advanced treatment, as necessary, to ensure that injectate will not cause a USDW to exceed any national primary drinking water regulations in 40 CFR part 141 and other health-based standards. This second option also proposed a provision whereby all facilities qualifying for authorization to inject under this option would be required to install advanced wastewater treatment and high-level disinfection by 2015. The preamble to the proposal describes in detail the history of domestic wastewater injection in Florida, along with the features of Florida geology that have allowed some of that injected wastewater to enter USDWs. EPA received approximately 1,200 comments on the proposal (the comment period closed on October 22, 2000). The Agency will address these comments, along with comments received in response to this notice of data availability, as part of the final action on this rulemaking.

C. Relative Risk Assessment of Management Options for Treated Municipal Wastewater in South Florida

As part of EPA's fiscal year 2000 appropriations bill, Congress included the following provision: ''Within available funds, the conferees direct EPA to conduct a relative risk assessment of deep well injection, ocean disposal, surface discharge, and aquifer recharge of treated effluent in South Florida, in close cooperation with the Florida Department of Environmental Protection and South Florida municipal water utilities.'' Because this directive came at a time when EPA's work on the July 7, 2000, proposal was substantially complete, the Agency decided to proceed with the proposal and the relative risk assessment along separate but converging paths. First, EPA published and sought comment on the proposal based on information available at that time. Second, EPA initiated and conducted the relative risk assessment with the intent of using relevant findings to inform the final rulemaking.

EPA started the relative risk assessment by working with stakeholders to develop an appropriate methodology. The Agency first outlined a proposed methodology following standard risk assessment principles and guidance, such as the ''Guide for Developing Conceptual Models for Ecological Risk Assessments.'' [1] EPA then held a stakeholders meeting on March 20, 2001, in Tallahassee, Florida to discuss the proposed methodology. The meeting was attended by 17 stakeholders representing municipal water utilities, regulators, and community and environmental groups. Participants offered comments on the proposed methodology, which EPA adopted accordingly.

The methodology involved a process for investigating the four very different wastewater disposal options: deep well injection, aquifer recharge, discharge to ocean outfalls, and discharge to other (non-ocean) surface water bodies. Each option has its own specific stressors (hazards), exposure pathways, receptors, and effects. Parameters that are relevant to one particular disposal option are not necessarily relevant to the remaining three. Therefore, a strictly quantitative comparison between the four options was not possible.

Instead, EPA conducted what is termed a relative risk assessment to both assess the risks and allow comparisons. Individual risk assessments were completed for each wastewater disposal option and the risks associated with each were characterized. The risks and risk factors identified through each option-specific disposal option were then evaluated and described. The overall comparisons and conclusions were then presented as relative risk assessment matrices.

The steps involved in the relative risk assessment included developing a Generic Risk Analysis Framework followed by conducting analyses of option-specific conceptual models. Data from many sources were used to support the analyses. These sources include the Florida Department of Environmental Protection, utilities (and the South Florida Water Environment Utility Council), and municipalities in South Florida. EPA also worked with a panel of experts both inside and outside of EPA and from a variety of fields to review and incorporate data and information acquired through exhaustive searches of the relevant scientific research literature. Risk characterization for each option included identifying and describing the associated risks, their potential magnitude, and the potential effects on human and ecological health. The relative risk assessment then described and compared risks for all four wastewater management options. Finally, the relative risk assessment was peer reviewed in accordance with the Agency's Peer Review Handbook.

III. Findings of the Relative Risk Assessment Pertaining to Deep Well Injection

The relative risk assessment offers comparisons of deep well injection, ocean disposal, surface discharge, and aquifer recharge of treated municipal wastewater in South Florida. Findings related to each of these management options are highlighted in a separate notice in today's **Federal Register** and presented in greater detail in the relative risk assessment report. EPA is seeking comment in sections IV and V below on how these findings should inform the final rulemaking on Class I municipal wells in Florida. To provide background and context for those following sections, the remainder of this section summarizes how the relative risk assessment addresses five key questions specifically related to deep well injection.

A. What Level of Treatment and Disinfection Is Provided for Deep Well Injection?

All facilities that manage municipal wastewater by deep well injection in Florida are required to provide, at a minimum, secondary treatment of the wastewater prior to injection. Secondary treatment comprises biological removal of dissolved organic and inorganic matter, commonly through such methods as activated sludge and trickling filter processes. By itself, secondary treatment does not remove microorganisms by either disinfection (through the addition of chlorine, for example) or filtration.

[1] Prepared by G.W. Suter II of Oak Ridge National Laboratory for the U.S. Department of Energy. Report No. ES/ER/TM–186 issued in May 1996. Available at *http://www.esd.ornl.gov/programs/ecorisk/tm186.pdf.*

Utilities that employ deep well injection in South Florida must maintain disinfection capability, but many do not disinfect treated effluent prior to injection. For example, treatment of wastewater that is injected by Class I municipal wells in Dade and Brevard Counties consists of secondary treatment with no disinfection, although backup disinfection capability is required. In contrast, in Pinellas County, wastewater is treated to reclaimed water standards before being discharged into Class I municipal wells, because the Class I wells are used to dispose of reclaimed water during periods of wet weather. Reclaimed water standards, as specified by the State of Florida, include secondary treatment and a variety of techniques to address pathogenic microorganisms, including filtration and high-level disinfection.

B. What Stressors Remain (After Treatment) That May Be a Concern for Deep Well Injection?

''Stressors'' include chemical or biological agents that may cause adverse effects if exposure levels are high enough. They may pose a risk to human health and/or ecological health if they reach receptors (USDWs, drinking water supply wells, surface waters) at sufficiently high concentration levels. EPA has included USDW's as a receptor because of the Agency's responsibility under the Safe Drinking Water Act to prescribe regulations for State underground injection programs, like Florida's, that contain minimum requirements to prevent underground injection from endangering USDW's.

In cases where injectate has received secondary treatment only, bacteria, viruses, and protozoa (*e.g., Cryptosporidium* and *Giardia*) are generally not inactivated prior to deep well injection in South Florida. In cases, such as Pinellas County, where injectate has been treated to reclaimed water standards, viruses and bacteria have likely been largely inactivated through disinfection and protozoa have been largely removed through filtration.

Disinfection (or chlorination) by-products such as trihalomethanes may also be present in some wastewater, although no data are available to suggest that such by-products are a serious concern for deep well injection or any of the other wastewater management options studied in South Florida. EPA would not expect such by-products to be present in wastewaters that have not undergone basic disinfection, as is often the case for Class I injectate.

Nutrients are potential ecological stressors for deep well injection, assuming the injected wastewater contains significant quantities of nutrients and assuming the injected wastewater is able to migrate underground and discharge into the ocean or into other surface water bodies. Nutrients can potentially stimulate production of algae, which can lead to adverse side effects such as eutrophication. Nitrogen is the primary nutrient concern for Class I injection, because of its mobility in ground water. Nitrogen is also the primary nutrient of concern if it migrates to the ocean, because it is generally the limiting nutrient for algae production in the ocean. Phosphorus is of less concern for underground injection because it tends to adsorb quickly to sediment or soil.

C. What Exposure Pathways Are (or May Be) of Significance for Deep Well Injection?

An ''exposure pathway'' is the course a stressor takes from a source of release to an exposed organism. It is defined by the different environmental media through which a stressor migrates (*e.g.*, air, surface water, ground water) as well as the mechanism by which an organism is actually exposed (*e.g.*, inhalation, drinking).

There are documented impacts to USDWs resulting from deep well injection in South Florida, which raise concerns about potential human exposures via the drinking water pathway. Beginning in the late 1980s, ground water monitoring wells at 18 of the 45 municipal facilities that utilize Class I deep well injection in South Florida began to detect the movement of fluid outside of the permitted injection zones. Movement of effluent into USDWs either has been confirmed or is suspected at nine facilities, as evidenced by levels of nitrates and ammonia, as well as significant changes in dissolved solids concentrations.

Contaminants released by deep well injection can migrate through the subsurface and discharge into marine and/or surface waters, where they could pose risk via other pathways if loadings were sufficiently large. Such subsurface transport is especially a concern where contaminants can migrate relatively rapidly and with relatively little attenuation through preferential flow paths (fractures, faults, and solution cavities) common in the carbonate rocks in South Florida. Potential concerns associated with injectate migrating into the ocean or other surface water bodies could include the risk of ecological damage as well as the risk of human exposure to contaminants through such recreational activities as fishing, swimming, and boating.

D. What Is the Overall Estimate of Risk for Deep Well Injection?

The human health risks associated with deep well injection of treated municipal wastewater in South Florida are generally low. Several factors affect risk levels at particular sites.

The degree of wastewater treatment, and in particular the level of disinfection and filtration of pathogenic microorganisms (*e.g., Cryptosporidium, Giardia*), is one such factor. Risks are lower when wastewater has been treated to remove microorganisms. For wastewater that has received only secondary treatment, risk would be high in situations where the injectate migrates through fractures, faults, and solution cavities and lower in situations where the injection is dominated by porous media flow, characterized by long travel times to current or potential drinking water sources, and flows through fine pore spaces capable of retaining microorganisms.

Once *Cryptosporidium, Giardia*, and other stressors are released to the environment, the level of risk they pose to human health depends largely on how likely they are to enter drinking water supplies and over what time horizon. The record shows that such contamination of drinking water supplies or USDWs is a possibility as a result of the movement of fluid found at some injection facilities. In some cases, the time frames for fluid to potentially reach USDWs are short enough that treatment of injectate (*i.e.*, inactivation, filtration) may be warranted.

Overall, the risk to surface water ecosystems is low when treated wastewater is managed by deep well injection in South Florida. The potential for damage may be higher where treated wastewater is released in proximity to surface water that already has impaired water quality, which is the case for many surface water bodies in South Florida. In these cases, the nutrients that might enter impaired waters could exacerbate existing water quality and ecological problems. The dynamics of potential fluid movement from UIC wells to surface waters is still not well understood, however, at present there is no evidence of contamination of surface water by Class I injectate.

Deep well injection could also pose a risk to marine ecology if contaminants readily migrate and discharge to offshore waters. However, whether this actually happens in South Florida, and whether it poses a real threat in the ocean, is unknown. Given, however, that direct discharge of effluent which has received only secondary treatment and basic disinfection to the ocean

appears to pose little risk due to rapid dilution, it is unlikely that seepage from ground water to the ocean would pose a significant risk.

E. What Are the Important Data Or Knowledge Gaps for Deep Well Injection?

In conducting the relative risk assessment, EPA found that there is a lack of definitive studies in South Florida that use a physical or chemical tracer or indicator to show whether stressors detected in aquifers come from treated wastewater managed by deep well injection, and if so, by what likely contaminant transport pathways (porous versus conduit flow). In addition, without more definitive tracer studies, it is difficult to assess the potential effects of local geochemical conditions on the fate and transport of injected treated wastewater.

While results from ground water monitoring around some Class I municipal wells in South Florida confirm that fluids have migrated out of the permitted injection zone, the full areal extent of USDW contamination is not known. This is not only because available monitoring data are limited, but also because the location and connectivity of natural conduits for fluid flow (fractures and solution cavities in the underground formations) are difficult to predict.

The fate and transport of pathogens in South Florida's aquifers are not completely understood. For example, the rates of microbial survival, inactivation, and transport are difficult to predict. Also uncertain are the rates of microbial straining or filtration by geological materials under different fluid flow scenarios, including porous media and conduit flow. Even with the most sophisticated modeling, or with expensive monitoring, this information is difficult to verify since the formations are thousands of feet underground. There is also insufficient data at present on the presence and viability of pathogens in injectate that has migrated out of the injection zone. However, the presence of coliform bacteria in injectate that has migrated, a long accepted indicator of the presence of sewage, indicates the likely presence of pathogenic microorganisms.

IV. Relevance of These Findings for the Final Rule for Class I Municipal Wells in South Florida

EPA requests comment on how the findings from the relative risk assessment, and identified data gaps, help inform the final regulatory action on the July 7, 2000, proposal. EPA specifically requests comment on the three issues discussed below.

A. Additional Wastewater Treatment Prior to Injection

EPA believes the following findings from the relative risk assessment are relevant to the question of the extent to which additional treatment may be needed for Class I injectate that has a potential to reach USDWs.

1. Wastewater that does not undergo disinfection contains viruses and pathogenic bacteria and protozoa that have not been inactivated. Although the fate and transport of these pathogens in South Florida's subsurface is not well known, monitoring and modeling data suggest that, at some sites, fluid may migrate at rates that are sufficient to transport active and infective pathogens into USDWs. For example, using first order analytical modeling with conservative parameters and assuming flow is dominated by bulk flow through preferential flow paths, travel times to the base of the USDW of 170 days, 14 years, and 86 years have been estimated for Pinellas, Dade, and Brevard Counties respectively. There is significant uncertainty as to how long the viruses, protozoa, and bacteria will remain alive and to what extent they may affect existing and future sources of drinking water, although it is expected that significant attenuation and die-off would occur in the deep subsurface over long travel times. The limited data that are currently available show one-log (90%) inactivation rates in aquatic media ranging from 40 to 200 days for *Cryptosporidium*, 6 to 50 days for bacteria, and 1 to 30 days for viruses. This suggests that pathogen contamination would likely be a concern in areas where travel times are potentially short (*e.g.*, Pinellas County). For such areas, additional treatment (*e.g.*, primary treatment, coagulation, settling, filtration, and high-level disinfection) would likely be needed to inactivate, remove, or greatly reduce pathogens in order to increase the level of protection for current and future sources of drinking water. (As noted above, wastewater in Pinellas County is already treated to reclaimed water standards, which include both disinfection and filtration.) Additional treatment beyond secondary may also be appropriate to address pathogenic microorganisms in cases where injection of large volumes of wastewater increases the uncertainty regarding the areal extent of fluid movement and travel times for fluid to potentially reach USDWs.

2. Insufficient confinement is evident at some facilities and locations. At nine facilities, there is either confirmed or suspected contamination of USDWs as a result of the movement of fluid from designated injection zones. This is a violation of Federal and State Class I UIC requirements, which prohibit any contaminants from entering USDWs. At nine other facilities, there is evidence of movement outside of the injection zone, though not yet into USDWs. Monitoring reports from some facilities suggest that fluid movement has resulted in fluctuations in total dissolved solids (TDS) concentrations and less pronounced changes in the concentrations of other potential stressors (*e.g.*, fecal coliform, nitrate, ammonia, and total Kjeldahl nitrogen). Such fluid may have the potential to contaminate future sources of drinking water and place existing public and private water supplies at risk.

3. The full areal extent of fluid movement is not known. Nearly 500 million gallons per day (mgd) are disposed of through deep well injection at 42 sites in South Florida, with rates for individual wells ranging from less than 1 to more than 100 million gallons per day (mgd). While the dynamics of horizontal movement at any of these 42 sites of this quantity of water are not well understood, there is some evidence that water with the potential to reach USDWs (due to inadequate confinement) may not travel far. The first-order analytical modeling results presented in the relative risk assessment show horizontal travel distances at the surface ranging from 0.1 to 1.6 miles assuming rapid (bulk) vertical flow, and ranging from 1.2 to 16 miles assuming slow (porous media) flow. Note that a travel distance of 16 miles is modeled to occur only under a very long time horizon (1,188 years). Two members of EPA's External Peer Review Panel expressed concern, however, regarding the feasibility of using numerical models to assess the pattern of flow in and around the discharge zone (known as the Boulder zone), and to account for several trillion gallons of treated municipal wastewater that has been injected into the Boulder zone since the inception of Florida's Class I UIC program. These Panel members also pointed out that the risk could be significantly higher to USDWs than the modeling calculations that assumed porous media flow suggest, due to large uncertainties that were not accounted for in this modeling. In response to these concerns, EPA developed a second model assuming bulk flow through preferential flow paths, with travel times for injectate to reach USDWs and drinking water wells that were an order

of magnitude shorter than the porous media flow model. EPA believes, and the reviewers agreed, that this second model largely addresses the concerns raised, but recognizes that significant uncertainty regarding the dynamics of underground fluid movement remain.

4. The location and connectivity of natural conduits for flow (*i.e.*, fractures, faults, and solution cavities) are unknown, although their existence is well known by the type of rock present (*e.g.*, limestone) and confirmed by logs during deep well construction. Where such conduits are present, they may contribute to rapid migration of injected fluids or displaced formation water, with little attenuation of contaminant concentrations. Furthermore, such conduits may result in unpredictable patterns of movement in the subsurface. The relative risk assessment attempts to simulate such flows on a regional (not site-specific) basis using a first order analytical model with conservative parameter assumptions. However, there is significant uncertainty in these results.

B. Feasibility of a Hydrogeologic Demonstration

Option 2 proposed on July 7, 2000, (as described above) would allow facilities operating Class I municipal wells that have caused or may cause fluid movement in South Florida to continue injection if they perform a detailed hydrogeologic demonstration showing that injection will not cause fluids to migrate and cause USDWs to exceed any national primary drinking water regulations in 40 CFR part 141, and other health-based standards. Where this demonstration cannot be made, Option 2 would require facilities to provide additional treatment as necessary to address contaminants of concern and ensure that the continued injection does not endanger USDWs. All facilities qualifying for authorization to inject in accordance with Option 2 would be required to have advanced wastewater treatment and high-level disinfection in place by the year 2015. This requirement to phase in additional treatment by 2015 was intended to provide municipalities with more time to provide additional treatment if the municipality could conduct a successful hydrogeologic demonstration.

EPA believes the following relative risk assessment findings are relevant for assessing the feasibility of conducting a credible detailed hydrogeologic demonstration, as proposed under Option 2.

1. As noted in the preceding section, the specific location, extent, and connectivity of natural conduits for flow are unknown and unpredictable in the South Florida areas targeted by the proposal. Therefore, some of the key parameter values that would be used in ground water modeling may be highly uncertain, and this may lead to a broad range of predicted results for the location and movement of the injected fluid. The relative risk assessment attempted to address this issue on a regional (not site specific) basis by using first order analytical methods to modeling bulk/preferential flow. This may or may not be practicable for site-specific numerical modeling.

2. The ground water monitoring wells (or networks of monitoring wells) at most deep well facilities in South Florida are sufficient only for the purpose of providing an early warning of fluid movement. Typically, ground water monitoring networks are used at waste management facilities (*e.g.*, hazardous waste landfills) to detect and characterize the movement of relatively small volumes of contaminants in shallow ground water. No deep well municipal waste disposal facilities in South Florida have designed, constructed, and implemented ground water monitoring programs capable of describing the full areal extent of fluid movement, especially where natural conduits for flow are present. In addition, few facilities perform extensive monitoring between the base of the lowermost USDWs and the shallower surficial aquifers. As noted above, however, modeling results suggest that the areal extent of contamination that reaches the surface rapidly through preferential flow may be limited (up to a few miles), although there is significant uncertainty in these results due to the volumes of fluid being injected and the possibility of fairly rapid horizontal movement in the Boulder zone below the USDW, which was not explicitly modeled.

3. It is unclear whether it would be practicable to provide enough additional ground water monitoring wells to provide the information needed to demonstrate that fluid movement is not occurring and USDWs are not being contaminated at sites where natural conduits for flow exist. Because flow could well progress at different rates in different directions, monitoring results for well locations at such sites would not necessarily be representative of conditions at unmonitored locations. Furthermore, there could be concern about the installation of many monitoring wells to examine a particular site, because they may penetrate rock and other materials that are otherwise barriers to fluid movement. If such monitoring wells are constructed or managed improperly, they could present man-made conduits for fluid movement.

C. Some Deep Wells May Have Been Misclassified as Class I, When They Are Actually Class V

Given the extent of fluid movement documented at some sites, as well as information concerning the geology and the construction of some municipal wells in South Florida, it is possible that some wells may have been misclassified as Class I when they are actually Class V. According to the Federal UIC regulations, Class I wells ''inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water'' (40 CFR 144.6(a)(2)). Class V wells are defined as wells that are not included in Class I, II, III, or IV. Typically, Class V wells release non-hazardous fluids into or above formations containing USDWs.

Separate from the issue of how Class I and Class V wells are defined, the Federal Class I and Class V UIC programs differ in their basic approach to protecting USDWs. The basic standard of protection in the Class I program is to ensure that there is no movement of any contaminant into USDWs. This standard is achieved through a Class I regulatory program that focuses on the development and enforcement of stringent permit requirements, including, but not limited to, criteria for well siting, construction, and operation and maintenance. A key component of the Class I program is ensuring that adequate confinement exists between the permitted injection zone and USDWs at a given site.

Since most Class V wells release fluids either directly into or above USDWs, they by definition cause the movement of fluid, which may contain contaminants, into or above USDWs. Therefore, the basic standard of protection in the Class V program is to prevent any contaminants in the fluid from endangering USDWs. Protection efforts in the Class V program mainly focus on regulating and monitoring injectate quality to ensure that the movement of injected fluid will not contain any contaminants that may endanger USDWs. This standard is achieved through inventory and assessment requirements, additional reporting requirements, closure requirements, and other requirements (possibly including permitting requirements) believed by UIC program staff to be necessary to protect drinking water supplies.

The failures of confinement that have been documented at some municipal

well sites in South Florida, which are most likely attributable to the presence of natural conduits for flow in the subsurface, suggest that the injection zones used by these municipal wells are not sufficiently separated from overlying USDWs by a confining layer to prevent fluid movement upward into the USDW. The injectate from these wells is, therefore, entering into a USDW. Injection zones in South Florida often share a ''degree of lithologic homogeneity'' (as specified in the 40 CFR 144.3 definition of ''formation'') with the overlying ''confining layers'' and USDWs (*i.e.*, each consists of carbonate sequences). In some locations, the injection zones, ''confining layers,'' and USDWs may be said to exist within one formation. It is possible that a well injecting at such a location may not be appropriately classified as a Class I well.

Information collected for the relative risk assessment raises a question as to whether certain South Florida municipal disposal wells should have been classified as Class V at the time they were first permitted. In particular, all of the lithologic units of the upper Floridan Aquifer in Pinellas County and the lower Floridan Aquifer in Miami-Dade consist of limestone and dolomite that have shown evidence of solution cavities and fractures. These natural conduits for fluid flow raise a question as to whether lithologic units in these aquifers are effective confining layers and whether the injection zones and overlying USDWs are in different and distinct formations, as they were believed to be when the wells were originally sited, constructed, and permitted as Class I wells.

V. Solicitation of Comment

In the July 7, 2000, proposed rule (65 FR 42234), EPA proposed regulatory options that would allow for continued wastewater injection by existing Class I municipal wells that have caused or may cause fluid movement in specific areas of Florida. The relative risk assessment described in this notice and in a companion notice appearing elsewhere in today's **Federal Register** contains some new information regarding the potential risks of deep well injection of municipal wastewater in South Florida. The Agency is soliciting comment on whether and how the findings of the relative risk assessment should inform the Agency in developing the final rule for wells currently classified as Class I deep municipal wells in South Florida.

In addition to the issues discussed above, the Agency is soliciting comment on the following three issues:

1. The Agency solicits comment on an alternative option for defining the appropriate level of wastewater treatment required for continued injection in deep municipal wells in South Florida. The proposed rule solicited comment on four levels of advanced wastewater treatment, nutrient removal, and high-level disinfection that, under Option 1 and by the year 2015 under Option 2, would be required of facilities operating wells that have caused or may cause fluid movement. The alternatives proposed under Option 1 were: (1) Treatment to 10–24 mg/l biochemical oxygen demand (BOD) with disinfection; (2) treatment to 10–24 mg/l BOD with disinfection and nutrient removal; (3) treatment to <10 mg/l BOD with disinfection; and (4) treatment to <10 mg/l BOD with disinfection and nutrient removal. These levels were used by the 1996 Clean Water Needs Survey Manual to delineate and cost levels of advanced treatment. To achieve high-level disinfection, the proposal said owners and/or operators must allow the wastewater to remain in contact with at least 1.0 mg/l of free chlorine for at least 15 minutes of contact with no fecal coliform.

Several commenters suggested that the proposed standards for BOD removal are inappropriate for the protection of ground water for the purpose of protecting human health. These commenters stated that BOD levels are typically used for the protection of ecological values in surface water, not the protection of human health associated with drinking ground water. The commenters also pointed out that the main stressor of concern in the injectate is pathogens, not BOD. Separately, commenters noted that EPA's proposed definition of high-level disinfection differs from the State of Florida's definition of the same term in Rule 62–600.440, F.A.C., which commenters thought would result in confusion. Other commenters suggested that any new EPA wastewater treatment requirements should be consistent with corresponding state requirements. For example, Florida's regulations for waste treatment and disinfection applicable to reclaimed water that may come into human contact (Rule 62–610.460, F.A.C.) and ground water disposal by underground injection in Class V wells (Rule 62–600.540(2) and (Rule 62–600.440(5), F.A.C.) are similar to the more advanced levels of treatment envisioned under Option 1 of the proposed rule that require filtration before disinfection. As stated in the Florida regulations, by removing TSS before disinfection, filtration serves to increase the ability of the disinfection process to inactivate viruses and other pathogens. Filtration also serves as the primary barrier for removal of protozoan pathogens (*Cryptosporidium, Giardia,* and others).

Based on these comments, EPA is now considering and soliciting comments on prescribing wastewater treatment requirements in language that differs from the four alternatives proposed on July 7, 2000 but conforms with relevant state requirements. The Agency is not asking for additional comment on the four levels of advanced wastewater treatment, nutrient removal, and disinfection described in the proposal. Under this alternative, the Agency would simply adopt, in lieu of the four standards in the proposal, the Florida standards in Rule 62–610.460, F.A.C. (for waste treatment and disinfection applicable to reclaimed water that may come into contact with people) or the standards in Rule 62–600.540(2) and Rule 62–600.440(5), F.A.C. (for ground water disposal by underground injection in Class V wells). Specifically, EPA would require advanced wastewater treatment that results in treated water meeting, at a minimum, secondary treatment and high-level disinfection as defined in the Florida regulations. Also, filtration would be required for TSS control prior to disinfection, which would specify that the treated wastewater not contain more than 5.0 mg/l of TSS before the application of the disinfectant. EPA believes that this treatment standard might offer some important advantages over the alternatives proposed before. In particular, it might better address the risks associated with pathogens, and it would be consistent with the standards already adopted and implemented in Florida for reclaimed water and wastewater disposed of through Class V injection wells, which are part of domestic wastewater treatment systems.

The Agency asks commenters if this standard for advanced treatment and high-level disinfection should be specified in the final rule and requests that commenters describe the type of treatment that would be necessary to achieve the performance standards (*i.e.*, national primary drinking water regulations and other health-based standards). Although the Agency believes that the design and construction costs of this option are equivalent to those for the earlier proposed treatment options that required treated effluent concentration of less than 10 milligrams per liter of BOD, the Agency requests that

commenters provide any information they have on the costs of this option.

2. The proposed rule solicited comment on a second option, Option 2, that would allow facilities operating wells that have caused or may cause fluid movement to conduct hydrogeologic demonstrations to show that injection will not cause fluids that exceed any national primary drinking water regulations in 40 CFR part 141 and other health-based standards to enter any USDW. Option 2 would also require well owners and/or operators that cannot make this demonstration to provide additional treatment as needed to address contaminants of concern. Further, Option 2 requires advanced wastewater treatment and high-level disinfection to be in place by 2015. The Agency requests comment on whether the findings from the relative risk assessment, specifically those regarding deep well injection, suggest anything regarding the practicability and feasibility of this approach. Should facilities be granted the opportunity to conduct hydrogeologic demonstrations (and expend the resources and funds necessary) despite the inherent difficulties and uncertainties regarding the extent, location, and connectivity of possible natural conduits for flow identified in the relative risk assessment? If facilities should be granted this opportunity, how should the UIC director in his/her review of a demonstration, address the technical difficulties in determining the extent of the contamination, and the location of conduits for flow into USDWs, so that the demonstration may be deemed adequate? Given the uncertainty that accompanies the effort to analytically or numerically simulate the fate and transport of fluid and stressors in South Florida's deep underground environment, EPA solicits comment on ways that a satisfactory hydrogeological demonstration can be conducted. Finally, the proposed rule included a ''sunset provision'' (requiring advanced wastewater treatment and high-level disinfection by 2015) as part of this option even if protection of USDWs is being demonstrated. EPA requests comment on an alternative that would allow the State Director to authorize updated hydrogeologic assessments and defer treatment requirements beyond 2015 if the assessments continued to demonstrate adequate protection of the USDW.

3. One option to address the fluid movement that has occurred, while also preventing the endangerment of USDWs, might be to promulgate new Class V requirements specific to deep municipal wells in South Florida. In a 1999 stakeholders meeting, the Agency discussed two options for reclassifying these wells as Class V. One of these options would reclassify the wells based on a determination that the wells no longer meet the regulatory definition of a Class I well. Another option would involve converting the wells to Class V by physically altering the wells so that they inject directly into or above formations containing the lowermost USDW. Two other options discussed at the stakeholders meeting were (1) to make no regulatory change (and enforce the existing requirements) and (2) to amend the Class I regulations to address the fluid movement issues. EPA ultimately proposed this last option and published proposed revisions to the Class I requirements. EPA stated in the preamble to the July 7, 2000, proposal (65 FR 42237): ''The Agency is not planning to allow reclassification unless the well was misclassified in the first instance. Misclassification might have occurred if the well did not originally meet the definition of a Class I well. The facility could demonstrate this if new information has become available that proves that the well originally was injecting into a USDW and therefore would meet the definition of a Class V well.''

EPA is now reconsidering the reclassification option. Reclassification could be accomplished without any regulatory changes to the Class I definitions or the Class I ''no fluid movement'' requirements. Following publication of this NODA and receipt of comments on this option, EPA, if it chose the reclassification option, would publish final revisions to the Class V regulations that include the same operating conditions that EPA would have promulgated as revisions to the Class I regulations. This option is contrasted with the approach discussed more fully in the July 7, 2000, proposal to keep the wells as Class I and add the necessary operating conditions to the Class I regulations. Either approach could be used to place the same operating conditions on continued injection activities and provide identical protection to USDWs.

In addition, EPA is considering whether there might be a need to promulgate the operating conditions under consideration as final regulations under both the Class I and Class V regulatory frameworks. This might be necessary in order to ensure that the new requirements apply to all municipal waste disposal wells in South Florida that cause or may cause fluid movement into a USDW, regardless of whether it is determined that a particular well may be reclassified as Class V or must remain in Class I. EPA invites comment on the need for incorporating the proposed operating conditions into either, or both, the Class I and Class V regulations. EPA notes that the costs of installing a specified level of treatment would be the same, regardless of whether a particular well is classified as Class I or Class V.

One potential advantage of the reclassification option is that it could correct any previous misclassification of wells in South Florida.

A potential disadvantage of the reclassification option is that it could lead to reclassification requests associated with other wells in other parts of the country and could limit the flexibility of local permit writers to make classification determinations.

In summary, with regard to reclassification of Class I wells, the Agency requests comment on whether the findings from the relative risk assessment, specifically those regarding deep well injection, suggest that some South Florida wells may have been misclassified as Class I wells? Do the findings suggest that some wells in South Florida may, in fact, discharge directly to (and not below) formations containing a USDW? Do the findings suggest that this misclassification should be accepted for the entire group of South Florida municipal wells, or only a subset? Should the regulatory requirements under consideration be promulgated under provisions for Class I or Class V? If reclassification is only appropriate for some of the covered South Florida wells, should the regulatory requirements under consideration be promulgated under provisions for both Class I and Class V.

Dated: April 17, 2003.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 03–10268 Filed 5–2–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–7488–8]

Underground Injection Control Program—Relative Risk Assessment of Management Options for Treated Wastewater in South Florida; Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: On July 7, 2000, the Environmental Protection Agency (EPA)

proposed revisions to the Underground Injection Control (UIC) regulations that would allow for continued wastewater injection by existing Class I municipal wells that have caused or may cause the movement of fluid into or between underground sources of drinking water (USDWs) in specific areas of South Florida. These revisions would provide owners and operators of such wells with an alternative for compliance with the existing UIC regulations, which prohibit such fluid movement, by allowing them to continue using their wells provided the injection does not endanger USDWs. Also in 2000, in a separate but related initiative, Congress directed EPA to conduct a relative risk assessment of four management options for treated municipal wastewater in South Florida: deep (Class I municipal) well injection, ocean disposal, surface discharge, and aquifer recharge. This document announces the availability of the relative risk assessment report required by Congress. EPA will consider the information collected on deep (Class I municipal) well injection contained in this relative risk assessment in making a final determination on the July 7, 2000, proposed rule. In a separate document in today's **Federal Register**, EPA is soliciting public comment on how this information in the relative risk assessment should inform the final rule on deep municipal wastewater injection in South Florida.

DATES: Comments on this notice of the data availability must be in writing and either postmarked or received by the docket by July 7, 2003.

ADDRESSES: Send written comments to: Nancy H. Marsh, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960. Comments must be submitted electronically to *marsh.nancy@epa.gov.* For additional information see Additional Docket Information in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: For inquiries, and/or to access the risk assessment report, contact Nancy H. Marsh, Ground Water & UIC Section, EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303 (phone: 404–562–9450; E-mail: *marsh.nancy@epa.gov)* or Howard Beard, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, EPA East, 1200 Pennsylvania Ave., NW., Mail Code 4606M, Washington, DC 20460 (phone: 202–564–3874; E-mail: *beard.howard@epa.gov*) or contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern daylight-saving time.

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I. General Information

Who Are Regulated/Affected Entities?

This notice is limited in application to the owners and/or operators of existing deep (Class I) underground injection wells that inject domestic wastewater effluent in specific counties in Florida. The counties are: Brevard, Broward, Charlotte, Collier, Dade, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. Regulated categories and entities include:

Category	Examples of entities
Municipalities and Local Government	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.
Private	Class I municipal injection wells disposing of domestic wastewater effluent in certain parts of Florida.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware of that could potentially be affected by decisions related to this notice. Other types of entities could potentially be affected by such decisions. To determine whether your injection well might be affected, you should carefully examine the applicability criteria in 40 CFR 146.15 of the July 7, 2000, proposed revisions to the Class I UIC regulations (65 FR 42234). If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Definition of Class I Municipal Wells

Class I injection wells are wells that inject fluids beneath the lowermost formation containing, within one-quarter mile of a well bore, a USDW (40 CFR 144.6(a)). Class I wells can be used to inject hazardous, industrial, or municipal wastes. Class I municipal wells inject treated wastewater from publicly or privately owned and operated facilities that treat domestic wastewater, which is principally derived from dwellings, business buildings, and institutions. Domestic wastewater is commonly referred to as sanitary wastewater or sewage. Treated wastewater from industrial facilities, often controlled through pretreatment standards, may also be found in this wastewater. Currently, Class I municipal wells are located only in the State of Florida.

B. Proposed Rule for Class I Municipal Wells in Florida

EPA has established minimum requirements for Class I municipal wells and other underground injection activities through a series of UIC regulations at 40 CFR parts 144 through 147, developed under the authority of the Safe Drinking Water Act. These regulations ensure that Class I municipal wells will not endanger USDWs by prohibiting the movement of any contaminant into USDWs.

On July 7, 2000, EPA proposed revisions to the UIC regulations that would allow continued wastewater injection by existing Class I municipal

wells that have caused or may cause movement of contaminants into USDWs in specific areas of Florida (65 FR 42234). Continued injection would be allowed only if owners or operators meet certain requirements that provide adequate protection for USDWs. In the alternative, if new requirements are not promulgated, owners and/or operators of wells targeted by the proposal would be required to close their wells and adopt different wastewater disposal practices, which could consist of surface water disposal, ocean outfall, and/or reuse. Use of these alternative disposal practices would likely require the construction of systems for advanced wastewater treatment, nutrient removal, and high-level disinfection.

The preamble to the proposed rule describes in detail the history of domestic wastewater injection in Florida, the features of Florida geology that have allowed some of that injected wastewater to enter USDWs, and the two major (as well as subsidiary) regulatory options EPA proposed to address this issue in a manner that would permit continued injection that would not endanger USDWs. EPA received approximately 1,200 comments on the proposal (the comment period closed on October 22, 2000). The Agency will address these comments, along with comments received in response to the related notice published separately in today's **Federal Register**, as part of the final determination on this rulemaking.

C. Relative Risk Assessment of Management Options for Treated Municipal Wastewater in South Florida

As part of EPA's Fiscal Year 2000 Appropriations bill, Congress included the following provision: ''Within available funds, the conferees direct EPA to conduct a relative risk assessment of deep well injection, ocean disposal, surface discharge, and aquifer recharge of treated effluent in South Florida, in close cooperation with the Florida Department of Environmental Protection [DEP] and South Florida municipal water utilities.'' Because this directive came at a time when EPA's work on the July 7, 2000, proposal was substantially complete, the Agency decided to proceed with the proposal and the relative risk assessment along separate but converging paths. First, EPA published and sought comment on the proposal based on information available at that time. Second, EPA initiated and conducted the relative risk assessment with the intent of using relevant findings to inform the final rulemaking.

EPA started the relative risk assessment by working with stakeholders to develop an appropriate methodology. The Agency first outlined a proposed methodology following standard risk assessment principles and guidance, such as the ''Guide for Developing Conceptual Models for Ecological Risk Assessments.'' [1] EPA then held a stakeholders meeting on March 20, 2001, in Tallahassee, Florida to discuss the proposed methodology. The meeting was attended by 17 stakeholders representing municipal water utilities, regulators, and community and environmental groups. Participants offered comments on the proposed methodology, which EPA revised accordingly.

The methodology involved a process for investigating the four very different wastewater disposal options: deep well injection, aquifer recharge, discharge to ocean outfalls, and discharge to other (non-ocean) surface water bodies. Each option has its own specific stressors (hazards), exposure pathways, receptors, and effects. Parameters that are relevant to one particular disposal option are not necessarily relevant to the remaining three. Therefore, a strictly quantitative comparison between the four options was not possible.

Instead, EPA conducted what is termed a relative risk assessment to assess the risks and allow comparisons. Individual risk assessments were completed for each wastewater disposal option and the risks associated with each were characterized. The risks and risk factors identified for each wastewater management option were then evaluated and described. The overall comparisons and conclusions were then presented as relative risk assessment matrices.

The steps involved in the relative risk assessment included developing a Generic Risk Analysis Framework followed by conducting analyses of option-specific conceptual models. Data from many sources were used to support the analyses. These sources include the Florida Department of Environmental Protection, utilities (and the South Florida Water Environment Utility Council), and municipalities in South Florida. EPA also worked with a panel of experts both inside and outside of EPA and representing a variety of fields to review and incorporate data and information acquired through comprehensive searches of the relevant scientific research literature. Risk characterization for each option included identifying and describing the associated risks, their potential magnitude, and the potential effects on human and ecological health. The relative risk assessment then described and compared risks for all four wastewater management options. Finally, the relative risk assessment was peer reviewed in accordance with the Agency's Peer Review Handbook.

Section III summarizes the major findings of the relative risk assessment, which has been finalized. In a separate notice of data availability published elsewhere in today's **Federal Register**, EPA requests comment on how the relative risk assessment should inform the final rulemaking on deep municipal injection wells in Florida.

III. Findings of the Relative Risk Assessment

The relative risk assessment offers comparisons of deep well injection, ocean disposal, surface discharge, and aquifer recharge of treated municipal wastewater in South Florida by considering several factors important for determining risk. This section highlights how the report addresses the following questions: (A) What level of treatment and disinfection is provided? (B) What stressors remain (after treatment) that may be a concern? (C) What exposure pathways are (or may be) of significance? (D) What is the overall estimate of risk? (E) What are the important data or knowledge gaps? The purpose of this summary, the publication of the report, and this notice of availability is to discharge fully EPA's responsibility to complete the relative risk assessment mandated by Congress.

A. What Level of Treatment and Disinfection Is Provided?

Municipal wastewater managed by any of the four options studied in South Florida receives secondary treatment, at a minimum. Secondary treatment comprises biological removal of dissolved organic and inorganic matter, commonly through such methods as activated sludge and trickling filter processes. By itself, secondary treatment does not provide disinfection, *i.e.*, removal of microorganisms.

1. Deep Well Injection

All facilities that manage municipal wastewater by deep well injection in Florida are required by Florida law to provide at least secondary treatment of the wastewater prior to injection. In addition, utilities that employ deep well injection must maintain disinfection capability, but many do not disinfect treated effluent prior to injection. For

[1] Prepared by G.W. Suter II of Oak Ridge National Laboratory for the U.S. Department of Energy. Report No. ES/ER/TM–186 issued in May 1996. Available at *http://www.esd.ornl.gov/programs/ecorisk/tm186.pdf.*

example, treatment of wastewater that is injected by Class I municipal wells in Dade and Brevard Counties consists of secondary treatment with no disinfection, although backup disinfection capability is required. In contrast, in Pinellas County, wastewater is treated to more stringent reclaimed water standards before being discharged into Class I municipal wells, because the Class I wells are used to dispose of reclaimed water during periods of wet weather. Reclaimed water standards, as specified by the State of Florida, include secondary treatment plus a variety of techniques to remove microorganisms, including basic disinfection, filtration, and high-level disinfection.

2. Ocean Disposal

Utilities in South Florida that employ ocean disposal provide basic disinfection in addition to secondary treatment prior to discharge. Basic disinfection removes fecal coliform bacteria by treating the wastewater with chlorine. However, wastewater that is discharged into the ocean does not undergo filtration. This means that pathogenic protozoans, such as *Cryptosporidium, Giardia,* and other chlorine-resistant microorganisms, may remain in the treated wastewater.

3. Aquifer Recharge

Utilities that employ aquifer recharge (which includes but is not limited to replenishment of surficial aquifers through irrigation, wetlands discharge, or discharge to percolation ponds) treat to reclaimed water standards prior to discharge. Small amounts of nitrogen and phosphorus and trace amounts of other inorganic and organic constituents remain. However, viruses and bacteria are inactivated and *Cryptosporidium* and *Giardia* are largely removed through filtration.

4. Surface Discharge

Utilities in South Florida that employ surface water discharges provide advanced treatment as required to meet State water quality-based effluent limits. Advanced wastewater treatment includes secondary treatment, basic disinfection, filtration, high-level disinfection, removal of chlorine following disinfection (*i.e.*, dechlorination), and further removal of nitrogen and phosphorus. It represents the highest level of treatment conducted in South Florida.

B. What Stressors Remain (After Treatment) That May Be a Concern?

''Stressors'' include chemical or biological agents that may cause adverse effects if exposure levels are high enough. The relative risk assessment report describes the human health and ecological health stressors that may be found in wastewater effluent after it has been treated and that may pose a risk.

C. What Exposure Pathways Are (or May Be) of Significance?

An ''exposure pathway'' is the course a stressor takes from a source of release to an exposed organism. It is defined by the different environmental media through which a stressor migrates (*e.g.*, air, surface water, ground water) as well as the mechanism by which an organism is actually exposed (*e.g.*, inhalation, drinking, topical contact). The relative risk assessment report discusses a variety of exposure pathways by which humans, plants, and animals may be exposed to municipal wastewater contaminants under each of the management options.

D. What Is the Overall Estimate of Risk?

Although the report does not quantify risks, it offers conclusions about the relative risks of the four wastewater management options and about the various factors that influence risks to human and ecological health.

1. Human Health

The human health risks associated with all four management options in South Florida are generally low. While it is difficult to compare the overall risks of the options directly, a relative comparison can be made on the basis of certain factors that tend to increase or decrease the risks of one or more options relative to the others. In particular, as discussed in turn in the following paragraphs, relative human health risks are higher when: (1) An option provides less wastewater treatment; (2) is more likely to contaminate current or potential drinking supplies; and (3) is more likely to result in people being exposed to discharged contaminants in other ways besides drinking.

The degree of wastewater treatment, and in particular the level of disinfection and filtration of pathogenic microorganisms (*Cryptosporidium, Giardia*), is a major risk driver. Clearly, there is greater potential risks associated with wastewater that is not treated to remove microorganisms. This would suggest higher relative risks for the deep well injection and ocean disposal options, which generally do not filter wastewater to remove *Cryptosporidium* and *Giardia* prior to disposal. Looking just at deep well injection, the risk would be highest in situations where the injectate migrates through fractures, faults, and solution cavities. The risk associated with *Cryptosporidium* and *Giardia* being released by deep well injection would be mitigated somewhat in situations where the injection is dominated by porous media flow, characterized by long travel times to current or potential drinking water sources and fine pore spaces capable of retaining microorganisms.

Once *Cryptosporidium, Giardia,* and other stressors are released to the environment, the level of risk they pose to human health depends largely on how likely they are to enter drinking water supplies. The relative risk assessment again suggests that deep well injection has a higher risk than the other options based on this factor. Movement of contamination into USDWs has been confirmed or is suspected at 9 of the 45 municipal facilities that utilize Class I deep injection in South Florida, as evidenced by levels of nitrates and ammonia, as well as significant changes in dissolved solids concentrations. The other option with a relatively high risk of contaminating drinking water supplies is aquifer recharge. Ocean outfalls and surface water discharges pose a lower risk of contaminating drinking water supplies, for reasons given previously.

Relative to the other options, however, ocean outfalls and surface water discharges pose a higher risk of people coming into direct contact with the released contaminants in other ways, such as by eating contaminated fish, by swimming in contaminated waters, and by participating in other recreational activities. These same two options also pose a risk of stimulating algal blooms that could be harmful, although this risk associated with surface water discharges is mitigated substantially by the removal of wastewater nutrients prior to release to surface waters in South Florida.

2. Ecological Health

Overall, the risk to surface water ecosystems is low when treated wastewater is managed by deep well injection and aquifer recharge in South Florida. The risk to surface water ecosystems is also generally low when treated wastewater is discharged directly to surface waters. For all three of these management options, however, the potential for damage may be higher where treated wastewater is released in proximity to surface water that already has impaired water quality, which is the case for many surface water bodies in South Florida. In these cases, the nutrients that might enter impaired waters could exacerbate existing water quality and ecological problems.

The risk to marine ecosystems is obviously greatest for the ocean disposal option. Ocean outfall monitoring data from available studies indicate that, for the most part, water quality standards are met by most constituents at the edge of the permitted mixing zone (approximated by a circle with a 400-meter radius), with the occasional exception of nitrogen and some metals. It is recognized, however, that effluent plumes may well extend outside the 400-meter radius and that marine organisms exposed in and around such plumes can likewise travel farther distances. Pathogenic microorganisms in particular pose some concern, because effluent discharged to the ocean is not filtered and there is some evidence to suggest that aquatic organisms suffer from high concentrations of such microorganisms. The effects of pathogenic microorganisms on aquatic animals need to be better documented, as does their concentration in ocean discharges and resulting plumes.

Deep well injection could also pose a risk to marine ecology if contaminants can readily migrate and discharge to offshore waters. However, the extent to which this actually happens in South Florida and poses a real threat in the ocean is uncertain.

Two potential ecological effects of particular concern, should surface or ocean waters be sufficiently contaminated, include harmful algal blooms and bioconcentration of toxic contaminants in the food web. Algal blooms can cause a variety of toxic symptoms in aquatic organisms (including death) as well as nontoxic adverse effects such as clogging of gills and smothering of coral reefs and seagrass beds. Food web bioconcentration of metals and other contaminants can also cause of variety of toxic effects.

Finally, the ocean discharge option introduces the potential for the physical destruction of coral reefs traversed by discharge pipelines. The existing ocean outfalls in South Florida range from 0.9 to 3.6 miles offshore. Any widening or extension of existing pipelines leading to these outfalls could impair or destroy any nearby coral reefs. The same would be true if new outfalls and pipelines are constructed through coral reefs in the future to accommodate increased disposal needs.

E. What Are the Important Data or Knowledge Gaps?

For all four wastewater management options, the relative risk assessment found that there is a lack of definitive studies in South Florida that use a physical or chemical tracer or indicator to identify the source and transport pathways of stressors detected in the environment. Ocean discharge is the only disposal option for which there is a known tracer study proving the source of stressors. In this study, a stable isotope tracer indicated that nitrogen was not being taken up in any significant amount by phytoplankton in the vicinity of the South Florida ocean outfalls. However, without more definitive tracer studies for each wastewater management option, it is difficult to assess the potential effects of local conditions on the fate and transport of treated wastewater after being released into the environment.

While results from ground water monitoring around some Class I municipal wells in South Florida confirm that fluids have migrated out of the permitted injection zone, the full areal extent of USDW impact is not known. This is not only because available monitoring data are limited, but also because the location and connectivity of natural conduits for fluid flow (fractures and solution cavities in the underground formation) are difficult to predict.

Specifically for the deep well injection and aquifer recharge options, the fate and transport of pathogens in South Florida's aquifers are not completely understood. For example, the rates of microbial survival, inactivation, and transport are difficult to predict. Also uncertain are the rates of microbial straining or filtration by geological materials under different fluid flow scenarios, including porous media and conduit flow. The fate and transport of pathogens is especially difficult to verify for deep well injection, even with the most sophisticated modeling or with expensive monitoring, since the receiving formations are thousands of feet underground.

Of particular relevance for the ocean disposal option, there is a lack of understanding regarding down-current impacts, risks to marine organisms passing through the mixing zone, and the potential for food web bioconcentration. Potential long-term ecological risks may exist inside and outside the mixing zone, but due to a lack of ongoing ecological monitoring studies around any of the existing ocean outfalls in South Florida, there is no information on actual biological receptors or exposure pathways that undoubtedly exist at the outfall sites. The lack of such long-term monitoring information makes it impossible to confirm that there are no long-term or cumulative ecological or biological effects of discharged effluent.

With respect to surface discharges, there is significant uncertainty regarding the potential for food web bioconcentration and the severity of cumulative impacts caused by other sources of the same chemical and microbiological stressors contained in treated municipal wastewater.

These other sources of contamination include onsite sewage disposal systems, non-point source runoff from agricultural or urban areas, atmospheric deposition, or other point sources. The risks posed by surface water discharge need to be put into overall context of the cumulative risks posed by all sources of stressors in order to gain a sense of their relative importance.

Dated: April 17, 2003.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 03–10269 Filed 5–2–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–65; FCC 03–54]

Interference Immunity Performance Specifications for Radio Receivers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This document requests comment from the public on the possibility of incorporating receiver performance specifications into the Commission's spectrum policy on a broader basis. Such specifications could be in the form of incentives, guidelines or regulatory requirements (or a combination of these) in particular frequency bands, services or across bands and services. The Commission believes that incorporation of receiver performance specifications could serve to promote more efficient utilization of the spectrum and create opportunities for new and additional use of radio communications by the American public.

DATES: Written comments are due on or before July 21, 2003, and reply comments are due on or before August 18, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, TTY (202) 418–2989, e-mail: *hvantuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry,* ET Docket No. 03–65, FCC 03–54, adopted March 13, 2003, and released March 24, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Summary of the Notice of Inquiry

1. By this action, the Commission begins consideration of incorporating receiver interference immunity performance specifications into our spectrum policy on a broader basis. Such specifications could be in the form of incentives, guidelines or regulatory requirements (or a combination of these) in particular frequency bands, services or across bands and services. We believe that incorporation of receiver performance specifications could serve to promote more efficient utilization of the spectrum and create opportunities for new and additional use of radio communications by the American public. From a technical standpoint, a radio receiver's susceptibility to interference is largely dependent on the interference immunity of the device, particularly with regard to its rejection of undesired radiofrequency (RF) energy and signals. If the receivers used in connection with a radio service are designed to provide a certain immunity or tolerance of undesired RF energy and signals, more efficient and predictable use of the spectrum resource can be achieved. Such receiver improvements could also provide greater opportunities for access to the spectrum. These opportunities will potentially lead to consumer benefits in the form of innovation, competition and choice among services and devices.

2. Increasingly in recent years, the preemptive effect of minimally performing receivers has been demonstrated, as licensees seek protection for service predicated on the performance of receivers with little tolerance for other signals. Had the RF environment in which these services would be expected to operate in the future, or the expected performance characteristics of those receivers, been defined in some way, these services could have been developed with receivers that could better tolerate the introduction of newer services on the same or proximate frequencies. Accordingly, in this Inquiry we seek information, comment, and research on issues concerning the current receiver environment, *i.e.,* the immunity performance and interference tolerance of existing receivers, the possibilities for improving the level of receiver immunity in the various radio services, and the potential positive and negative impacts of receiver standards on innovation and the marketplace. We also request comment on the possible approaches by which desired levels of receiver immunity or tolerances could be achieved, including incentives for improving performance, voluntary industry standards, mandatory standards, or a combination of these or other approaches. In this regard, it is not our intent at this time to implement a new regulatory regime that would generally subject all receivers to mandatory standards. Rather, we believe it is preferable to rely primarily on market incentives and voluntary industry programs that provide for flexibility in establishing and managing guidelines for receiver immunity, rather than formal mandatory standards incorporated into our rules. At the same time, we note that in the past the Commission has mandated various transmitter standards in order to control interference levels. As we recognize that receivers can contribute as much as transmitters to the existence of perceived interference, there may be benefits to the adoption of guidelines, labeling rules, or even mandatory standards for certain classes of receivers. This may be particularly relevant in situations where we continue to find that command and control spectrum management techniques are in the public interest [*e.g.,* public safety] or in situations in which it is not possible for all the relevant industry and consumer parties to reach voluntary agreements.

3. We further request information and comment on the considerations that should guide the Commission's approach to these matters in the various licensed radio services. This proceeding builds upon recent work of the Spectrum Policy Task Force (Task Force) to examine means for improving the management of the radio spectrum to increase the public benefits derived from use of the spectrum resource. In its Report, the Task Force concluded that the increases in demand for radio services in the limited amount of available spectrum and the rapid advances in radio system technologies, including new digital transmission systems, in recent years are necessitating that the Commission change its traditional model for managing the radio spectrum. The Task Force observed that greater opportunities for spectrum access would be facilitated if the minimum performance characteristics of the receiver were known and therefore recommended that we make receiver performance a more prominent part of our spectrum policy. In response to the Task Force report, a number of parties expressed their support for receiver standards and guidelines developed by industry standards groups. Several parties expressed support for Commission mandated requirements for certain receivers. Other parties oppose mandated receiver standards and guidelines.

4. The principal limiting factor in the allocation and assignment of radio frequencies is interference to received signals. Radio interference can occur when RF energy other than a desired signal is present in a receiver. Such undesired energy can be present from the emissions of one or a combination of other sources generating RF energy or can be generated within the receiver itself. Interference occurs when undesired RF energy is manifested in a radio communication system as a performance degradation, misinterpretation, or loss of information that could be extracted from a desired signal in the absence of the unwanted energy. The adverse effects of undesired energy present in a receiver can be minimized by improved design of the receiver.

5. The Commission's radio spectrum policies and rules, including its efforts to promote spectrum efficiency, traditionally have relied primarily on approaches that control the emissions and locations of transmitters and the frequencies used by specific types of radio operations. Under this model, the Commission has established operational parameters in given portions of the spectrum in which the pattern of radio signals, both geographically and technically, is well understood and generally predictable by equipment manufacturers and licensees.

Manufacturers could design and market products for designated services within these parameters and the predicted environment. In some services, licensees could choose the transmitter and receiver products that best meet their particular needs for the provision of radio communication services. In other services, including broadcast radio and television services, receiver products are designed and marketed for a mass consumer market, with the licensees having limited control or influence over their technical parameters and capabilities. Therefore, to some extent our existing rules, such as the TV allotment table, while limited to transmitting requirements, also assume certain levels of receiver performance.

6. Generally, this model has served well to control interference and to facilitate effective use of the spectrum in environments in which the specific services and operating technology are stable and very well defined. However, as recognized in the *Task Force Report,* the dramatic increases in the overall demand for spectrum based services, rapid technical advances in radio systems, in particular the introduction of various advanced digital modulation technologies such as code division multiple access (CDMA), and the need for increased access to the limited supply of spectrum in recent years are straining the effectiveness of the Commission's longstanding spectrum policies. These changes are prompting the Commission to revisit its traditional model and evolve its spectrum policy toward more flexible and market-oriented approaches that will provide incentives for users to migrate to more technologically innovative and economically efficient uses of the spectrum.

7. We now need to provide opportunities for an ever increasing array of new digital radio technologies and services and to allow licensees the flexibility to implement and modify these new technologies and services in accordance with market forces. We also need to relieve equipment manufacturers and service providers from the delays inherent in our regulatory processes, in particular, those involving lengthy rule makings. To meet these needs, we have implemented new licensing schemes under which bands of spectrum are assigned to licensees on a geographic basis and those licensees are allowed the flexibility to determine the nature of the services that operate in that spectrum and the technologies used to provide those services. The only operating restrictions applied to these operations are those necessary to ensure that interference is not caused to services operating in adjacent geographic areas or on adjacent frequency bands. These restrictions typically take the form of limits on signal strength at the edge of a licensee's service area and limits on maximum transmitter power, antenna height and out-of-band emissions.

8. It often is not possible to perform a reliable, comprehensive analysis to predict the strength of potential signal sources in a given frequency band and geographic area because licensees have discretion to select and modify transmitter locations, operating power, antenna directivity and type of transmissions. In addition, we observe that new digital technologies generally are inherently more robust, and resistant to interference, than analog systems. Our spectrum policies should account for this increased ability of digital signals to tolerate the presence of other signals. Further, with the increasingly intense use of the spectrum, there are now very few opportunities to allocate unused spectrum for new services and correspondingly, few bands in which there are not many users seeking to access the available frequencies. Thus, as indicated in the *Task Force Report,* interference management is now more difficult because of the greater density, mobility, and variability of transmitters and our flexible use policy that allows users the flexibility to determine how and where to operate in their assigned spectrum.

9. As part of our effort to revise our spectrum management policies to address the changes in RF operations and environments that have occurred in recent years, we are now beginning to investigate alternative approaches for managing interference. Consistent with the recommendations of the Task Force, we believe it will be necessary to shift our current paradigm for assessing interference from approaches based primarily on transmitter operations towards new approaches that focus on the actual RF environment and interaction between transmitters and receivers, such as the interference temperature metric. Such new approaches would better allow the Commission to anticipate and enable future users of the spectrum while providing a greater degree of certainty to incumbents regarding the RF environment they will continue to operate in.

10. In many cases, the effects of RF interference can be mitigated or eliminated through attention to receiver hardware design and signal processing software. There are many attributes of receiver performance that can be varied to increase a device's immunity to undesired emissions, and standards could be established for minimum performance requirements. Improving the general level of receiver performance with respect to interference immunity would allow increased operation of radio services on adjacent channels and frequency bands and thereby promote spectrum sharing and radio system interoperability that would permit more efficient use of the spectrum. In addition, more robust receiver performance would help to facilitate more flexible use of the spectrum. Such robust performance would allow receivers to tolerate changes in operating systems, services and frequency loading that are expected to occur under flexible use of the spectrum. At the same time, however, we recognize that improvements in receiver performance almost always increase production costs, and so there are trade-offs in costs and performance that must be balanced. In addition, we need to address how the benefits of upgraded receiver performance would be distributed among users. For example, improved receiver immunity may permit government operations over wider areas or at higher powers without causing interference.

11. In this proceeding, we seek additional information on the broad range of issues relating to the possible incorporation of receiver performance incentives, guidelines or standards. As discussed below, we invite interested parties to submit information, research, and comment on subjects including: potential receiver performance parameters, the manner in which receiver immunity performance capabilities should be incorporated into our spectrum policies and rules, including the scope of our authority to establish mandatory receiver standards by rule; possibilities for use of receiver interference immunity performance guidelines and standards in specific radio services; the impact of receiver minimum immunity performance requirements on innovation and the marketplace; the current receiver environment; and transition issues such as the treatment of legacy receivers.

Receiver Performance Parameters

12. A radio receiver's immunity to interference is dependent on a number of factors in its technical design and, in addition, the characteristics of the signals it receives. These factors may be closely related and in many cases interdependent, and a receiver's performance in one factor may often affect its performance in others. The factors determining receiver immunity

performance generally include selectivity, sensitivity, dynamic range, automatic RF gain control, shielding, modulation method, and signal processing. Receiver selectivity is the ability to isolate and acquire the desired signal from all of the undesired signals that may be present on other channels. Selectivity is a central factor in the control of adjacent channel interference. Sensitivity is the measure of a receiver's ability to receive signals of low strength. More sensitivity means a receiver can pick up lower level signals. Dynamic range is the range of the highest and lowest received signal strength levels over which the receiver can satisfactorily operate. The upper side of a receiver's dynamic range determines how strong a received signal can be before failure due to overloading occurs. Automatic RF gain control allows a receiver to adjust the level of a received signal as it appears at the unit's signal processing and demodulation sections. It can also be used to improve a unit's dynamic range and provide protection against overload. Shielding can consist of metal boxes, foil or other materials that isolate sections of a receiver from undesired RF energy.

13. Signal processing provides increased ability to isolate a desired signal from other RF energy, including another (undesired) transmitted signal. The degree to which interference immunity can be achieved through signal processing depends on the modulation method used for the transmitted signal. For example, the CDMA digital modulation system allows multiple signals to be transmitted and received simultaneously on the same frequency in the same area without intra-system interference. The analog FM modulation system provides for a ''capture effect'' from processing gain that allows a receiver to demodulate only the strongest signal present. Finally, in digital systems, trade-offs can be made between signal strength and data rates. In order to receive signals with higher data rates, it is generally necessary to have higher levels of signal-to-interference ratio (S/I ratio). Thus, in the presence of interfering signals the data rate could be adjusted to provide satisfactory reception. The interference immunity provided by signal processing and modulation systems is due to radio system design and signal architecture, rather than specific receiver attributes such as filtering. However, because proper use of these system factors can provide improvements in interference immunity, we are including them in the subjects to be investigated in this proceeding for inclusion in our spectrum policies.

14. We request comment and information on the factors or combination of factors and their interaction that we need to consider in developing receiver interference immunity performance guidelines and standards, as well as the costs and benefits of such guidelines and standards. We specifically request comment on the factors affecting interference immunity we have identified above and their relative importance. We also invite parties to identify additional factors that we should consider in establishing and applying receiver immunity standards. We also seek comment and information in response to the following questions:

—Are there any special hardware designs, software methodologies, or new technologies available that would significantly enhance receiver immunity performance?

—How are these performance factors related to frequency and operating power, and influenced by the nature of the RF environment?

—To what extent, and in what way, are some factors affecting interference immunity relatively more important than others across receivers used with different services or across devices that receive signals transmitted using different modulation methods?

—Are there factors that must be considered as a group and not independently due to their cross-interactions or relationships with other factors?

—Are some factors less important in providing interference immunity in certain modulation systems or receiver designs?

—How should any such differences be treated in specifying receiver immunity guidelines or standards?

—Can receiver interference immunity parameters be ranked in accordance with their level of importance to performance? What procedures or criteria should be used to determine how to trade off the level of receiver performance with the practical issues of cost and implementation?

—Should system characteristics such as signal processing gain and modulation methods that facilitate immunity from interference in receivers be considered germane to the process of establishing receiver performance guidelines or standards?

—Do new and emerging advanced radio systems, including those employing digital modulation, offer potential for significantly improving receiver immunity to interfering signals? What are the inherent performance limitations of these technologies?

15. The interference environment in which a receiver operates can be highly variable and its characteristics may often be strongly service related. That environment must first be identified and characterized to allow, at least in principle, the development of emission criteria that provide for quantitative comparisons of receiver performance. We request comment on the following questions concerning the interference environment in which receivers operate:

—What are the characteristics of the RF environment in which existing receivers or groups of receivers operate?

—If studies were to be carried out, what would be an efficient way to capture any relevant data or pertinent events given the dynamic changing nature of the environment over time?

—Should different receiver specifications or approaches be taken based on the environment in which the receiver is expected to operate (for example, high-powered or lower-powered frequency bands).

16. Another approach to describing the interference environment would be to develop a generic environment in which all receivers would be expected to perform adequately. Once the environment was identified, criteria directly related to receiver performance in that environment could be established. One way to measure performance would be to look at the signal to noise levels (S/N) of analog systems and the bit error rate (BER) of digital systems. These metrics are quantifiable, but specific levels or ranges would have to be developed. Another approach to receiver performance quantification would be to use generally agreeable criteria that have come about over years of development and interaction with equipment and the marketplace. For example, the 55 dB attenuation standard for adjacent channel protection by cable compatible consumer electronics equipment in Section 15.118(c)(1) was set based on manufacturers' experience with such equipment and their knowledge of the tolerance of equipment suppliers for that level of performance. We request responses to the following questions relating to the establishment of a generic receiver environment and possibilities for measuring receiver performance there under:

—If a generic environment were employed, how many conditions would have to be considered to cover the variability of the natural environments, (*i.e.*, narrow band,

wide band, closest frequency separation for interferer and carrier, etc.)?

—What measures of performance translate into good, acceptable, or poor operational metrics?

—Could manufacturers agree on performance categories and could quantifiable ranges be established for these categories? How many categories would be needed and where should the threshold for acceptable performance be set among those categories?

17. Digital technologies, in particular, provide flexibility for controlling almost all aspects of transceiver performance. Many receiver parameters can be software controlled, perhaps in response to specific interference in the signal environment. One example is frequency agile transceivers with automated transmitter power and frequency control. The design of the systems that these transceivers are used with provides for control of the frequency and signal strength used for operation. Advanced antenna technology coupled with system design techniques such as diversity, in terms of space, angle, frequency and time could also be used to enhance reception. We seek comments on whether and how system design elements that would enhance radio receiver performance should be incorporated into our receiver guidelines/standards program. In particular we seek comment on the elements of system design that should be included in receiver guidelines/standards and how we could limit the impact of receiver guidelines/standards on system design flexibility.

Incorporation of Receiver Interference Immunity Performance Guidelines and Standards Into Spectrum Policy

18. We seek information and comment on how best to incorporate receiver interference immunity performance specification into our paradigm for management of the radio spectrum. Initially, we envision that there could be three principal approaches for implementing measures for improving receiver performance: Voluntary industry standards; guidelines promulgated by the Commission, either in technical publications or as advisories in the rules; and mandatory standards adopted into the rules. As a general matter, we would prefer to rely primarily on voluntary programs that are supported and managed by industry, in conjunction with user groups as appropriate, to establish and maintain guidelines and standards for receiver immunity performance, rather than formally incorporate them into our regulatory programs. We believe that this approach provides the greatest flexibility for those developing and producing products to modify and update technical guidelines and standards in response to changes in technology, consumer desires, and economic conditions. We also believe that spectrum users have an incentive to reach voluntary agreements that provide for additional spectrum use. For example, the PCS industry has developed more rigorous standards than the Commission has imposed. On the other hand, we recognize that under a voluntary approach, if owners of non-conforming receivers experience interference, this might produce an incumbency problem that may limit efficient use of the spectrum. We seek comment on these issues.

19. At the same time, we will need to maintain a cooperative relationship with those managing voluntary standards to ensure that they provide the performance levels necessary to support more efficient use of the radio spectrum. There may also be instances where for various reasons it might be necessary or desirable for the Commission to exercise a greater role in the development and management of guidelines or standards. In such cases we would prefer an approach by which the Commission would maintain the specified guidelines or standards in either an FCC technical publication, such as the ''OET Bulletin'' series or an advisory in the rules. Finally, there may be some cases where it will be necessary to incorporate the specifications of the standard into our rules. We request comment on the following questions with regard to the manner in which to incorporate receiver guidelines and standards into our rules:

—What approaches should the Commission use for implementing receiver immunity performance into its spectrum policies? Commenting parties are specifically invited to submit additional measures to augment the three approaches suggested above or to suggest completely different plans.

—What benchmarks should the Commission use in determining the approach it should use in implementing specific receiver interference immunity performance guidelines or standards into its spectrum policies?

—With what organizations should the Commission work with to develop receiver performance requirements?

—How should standards or guidelines be implemented for services in which licensees have control over the receivers that are used, such as the cellular and PCS services, and in which they do not have control over the receivers, such as broadcast services?

—What are the cost implications of the various options for approaches for incorporating receiver interference immunity into our spectrum policies in terms of both cost of equipment and flexibility for users/system designers?

—We also seek comment on how to enforce any receiver standards.

20. We also request comment on the criteria that should be used in determining how to specify the form of immunity guidelines or standards. Guidelines/standards can be in the form of performance criteria that apply to the functional capabilities of a device or of design specifications for the manufacture of portions of a device. In general, we believe it is desirable to continue the Commission's traditional preference to specify guidelines/standards as performance criteria, and to make such guidelines/standards voluntary rather than mandatory. This approach gives manufacturers freedom to design the internal configurations of their products to compete on both price and functionality. However, there may be instances where it would be more appropriate to specify guidelines/standards for the design of some or all of the features of a device that affect interference immunity. We request comment on the forms in which we should specify receiver interference immunity performance guidelines/standards and invite commenting parties to submit suggestions for alternative forms of specifying receiver interference immunity performance guidelines/standards. We also request comment on the circumstances under which any given form should be employed. Finally, we ask how should the public be informed of the interference immunity performance of receivers and the relevant guidelines for specific types of radio operation, *i.e.,* how would consumers know about receiver performance in order to make informed decisions?

21. We also seek comment on the relationship between the appropriateness of receiver standards and models used to manage the spectrum. Limiting transmitter in-band power and spill-over into adjacent bands and areas, together with the definition of assigned frequency bands and areas, provide substantial definition to the interference environment in which licensees must design their

systems. Given these rules, would the costs and benefits of improved receiver interference performance be internal to licensees, and would they thus make efficient decisions regarding receiver performance? Would there be a need for receiver standards under a fully implemented property rights model, where markets allocate exhaustively and exclusively defined spectrum usage rights? How would such rules affect licensees, such as broadcasters, who do not have a decisional role in the performance of consumer receivers?

22. We believe that the Commission has the necessary statutory authority to promulgate receiver immunity guidelines and standards under Sections 4(i), 301, 302(a), 303(e), (f), and (r) of the Communications Act of 1934, as amended. We request comment on this assessment of our authority.

Use of Receiver Interference Immunity Performance Guidelines and Standards in Specific Radio Services

23. The receiver interference environment and demands placed on receiver performance are, to a large degree, dependent on the specific service supported by the equipment and the services provided on neighboring frequency bands. For example, mobile services that operate on relatively narrow channels with no guard bands or separation between communications channels need to use relatively high quality receivers that are sensitive to low level signals, provide good selectivity, and are resistant to overloading. Similarly, a service which involves safety of life generally needs to use equipment that is more robust in tolerating potentially interfering signals, to provide added assurances of dependable, reliable operation in environments where such signals are present. On the other hand, the signals of the terrestrial broadcast services, such as AM radio, can be received with relatively low cost receivers that may be less sensitive to low level signals, less selective, and more susceptible to overloading. As a result of such differences, we intend to explore operational environments and characteristics of the different types of services as they affect minimum receiver performance needs, as part of our investigation in this proceeding. As observed by the Task Force, the types of operations and services occupying neighboring frequency bands are a significant factor in the environment in which a receiver operates, and so we seek information on receiver performance issues of specific types of service and operations relating to both the in-band and out-of-band environments.

24. Given the large number of communication services, it appears more tractable to consider grouping the service related receivers immunity performance parameters that would most directly impact the development of receiver metrics. One grouping by service would include: (1) Public safety services, (2) satellite services, (3) mobile services, (4) fixed terrestrial services, and (5) broadcast services. Another grouping by area of use could consider services functioning in metropolitan and rural areas. Neither grouping is meant to be exclusive, but simply to isolate major performance and environment factors that could be considered for the development of receiver interference immunity performance standards. We seek comment on the types of groupings of services that would simplify the development of robust receiver performance, recognizing that, whenever appropriate, we have granted broad flexibility for licensees to offer different services in the same frequency band in order to respond to ever-changing marketplace needs. With the large number of communications services that are currently in operation, a program to study and define minimum receiver performance specifications across all radio services will be a substantial undertaking. We request comment and suggestions on how to plan for and manage such a program should we decide to undertake it. In particular, we request comment and suggestions regarding the services and/or receiver types with which to begin and how we should organize the process for defining immunity specification. We intend to closely involve industry and other interested parties that have expertise and interest in these matters in the specification process and request comment on how that involvement should be arranged. In this same context, we request comment on the parties that should be included in the work on developing standards for receivers use in the various services and/or service groupings. The specification of minimum receiver interference immunity performance guidelines/standards will involve tradeoffs in costs and perhaps other factors. We therefore ask for information on the cost implications of the various options for minimum immunity specifications for receivers used with the various radio services. We seek comment on issues relating to receiver immunity performance and guidelines/standards in our suggested service groupings as discussed below. We also seek comment on whether these groupings are appropriate, or whether grouping by other factors such as frequency band or operating bandwidth are more appropriate.

25. *Public safety services*—Public safety communications systems are used by organizations such as police, fire and emergency medical services whose mission often involves safety of life. These organizations need and, indeed, demand that their communications systems provide a very high degree of reliability. Thus, the operating requirements of public safety communications systems would seem to warrant or even necessitate the use of receiver immunity performance guidelines/standards that are tighter than those for general communication services. This could be affected perhaps by requiring that the guidelines/standards for public safety receivers be set higher than those for other equipment. We ask the following questions in this regard:

—Should we adopt an approach that would subject public safety communications systems to higher requirements for receiver interference immunity performance than other classes of receivers?

—What parameters of public safety system performance should be subject to minimum guidelines/standards for immunity to interference and how should we establish such guidelines/standards?

—What values should be specified for the parameters of public safety receiver interference performance?

—Are the reliability needs of public safety systems used for different types of operation, such as dispatch, personal location/identification, video/audio monitoring, telemetry, etc. different and if so, how should these differences be treated in establishing minimum performance guideline/standards?

—In cases where a general communication service can be used in a safety of life or property mode (such as E911 and VHF marine), should receivers used with such services be subject to guidelines/standards for interference immunity similar to those for public safety of receivers when operating in a safety mode?

26. As an illustration of a current approach on receiver standards for public safety services, the Public Safety National Coordination Committee (hereinafter the ''NCC'') has identified technical standards for radio receivers operating on the interoperability channels in the 700 MHz public safety band. It has also proposed that these standards be incorporated into the

equipment certification requirements of Part 90, Subpart R of our rules, 47 CFR part 90, Subpart R. In developing these proposals, the NCC considered recommending a metropolitan statistical area interference environment and a less stringent rural service area interference environment. However, it concluded that all of the receivers operating on the interoperability channels of the newly allocated 700 MHz public safety band should meet the metropolitan environment standard partly because of their public safety nature, and partly because of the inherent difficulty of enforcing a rule that specifies that certain radios can be used only in certain geographic areas. The NCC also decided not to specify receiver standards for radios operating on the non-interoperability channels in the 700 MHz public safety band since the technologies to be used in that portion of the band are not fully known. It deferred to the marketplace on that issue. We request comment on the possible use of similar approaches, including the reliance on a national committee process for development of receiver immunity standards for other public safety bands.

27. *Satellite services*—Satellite receivers must be very sensitive to low level received signals and therefore can be adversely affected by communications systems in adjacent bands. They can also experience interference from low level ambient noise sources that are below the minimum sensitivity level of receivers used in other types of radio services. Satellite communications systems are currently used for radionavigation, mobile communications, broadcast video and audio services, and fixed services. Each of these types of service has its own operating considerations and some are much more robust with respect to interfering signals than others. For example, fixed satellite systems that operate with geo-stationary orbit (GSO) satellites may use high gain antennas that provide high levels of signal, thus mitigating the relatively low level of the received signal. Fixed receivers used with direct broadcast satellite services also use dish antennas that provide considerable gain. However, mobile satellite receivers and mobile satellite radionavigation receivers use antennas that provide relatively low gain and thus must have very high levels of sensitivity to provide service. In the fixed satellite services, the use of high gain directional antennas provides a form of increased system selectivity because potentially interfering sources not located in the main beam of the antenna are attenuated. We seek information on a number of issues concerning interference immunity guidelines/standards for satellite services, as follows.

—How should satellite receiver interference immunity performance guidelines/standards provide protection against interference to low received signal levels?

—In the fixed satellite services, should antenna directionality be considered integral to any receiver interference immunity performance guidelines/standards?

—What parameters of satellite receiver performance should be subject to minimum guidelines/standards for immunity to interference and how should we establish such guidelines/standards?

—What values should be specified for the parameters of satellite receiver interference immunity performance?

—To what extent are the reliability needs of the various types of satellite services different and how should these differences be treated in establishing minimum performance guideline/standards? In addition are there any differences in specifications that are needed due to differences between fixed and mobile satellite services, and are different specifications needed for receivers used with low-Earth orbit (LEO) satellite systems than for receivers needed for GSO systems?

28. *Mobile services*—Mobile radio services include a broad range of systems operating on the land, the seas, and in the air. Specific services range from the mobile systems of the Commercial Mobile Radio Services, to business radios and ''push to talk'' operations, to maritime safety and communications systems, and to aviation communications systems for commercial and private air traffic. While these systems vary in their sophistication and operating ranges, all mobile receivers typically experience varying signal levels throughout their service area. For example, where a mobile unit is close to its base station, both the mobile and base station can operate with signal levels high enough to support operation. At the other extreme, when a mobile unit is operating near the edge of its operating range, both the mobile unit and its base station will receive relatively weaker signals. Mobile receivers also face operating complications such as reflected signals, or ''multipath,'' and varying levels of undesired and potentially interfering signals that vary depending on their location and operating frequency. In addition to these operating challenges, mobile handsets designers must place a large premium on light weight and small size. Thus, mobile systems, and handset units in particular, constitute one of the most demanding challenges in minimizing interference.

29. We believe it is appropriate to examine mobile receiver immunity performance in the light of our changing spectrum management policies, and particularly to determine whether the operation of these devices and spectrum efficiency could be enhanced by development of minimum receiver performance specifications. We request comment on the need for mobile radio immunity guidelines/standards and responses to the following questions on this issue:

—What minimum interference immunity performance would be appropriate for mobile service receivers and how those minimums compare to the performance of existing mobile service receivers?

—Should mobile receivers be subjected to more stringent minimum performance requirements than receivers for other communications services, given the higher variation in operating environment conditions experienced in the course of mobile operation? Would the specifications established under such an approach have an impact on the practical requirements of mobile equipment for small size and light weight?

—To what extent are the reliability needs of the various types of mobile radio services different and how should these differences be treated in establishing minimum performance guidelines/standards?

30. *Fixed terrestrial services*—Fixed terrestrial services include point-to-point and point-to-multipoint facilities. Point-to-point operations usually use highly directional transmit and receive antennas in order to minimize the potential for receiving interference and causing interference to others. Such operations are typically used for private or common carrier communications links, often as part of a bi-directional system with a transmitter and receiver at each end of the link. Point-to-multipoint operations sometimes use sectorized antennas that transmit in a broadcast-like mode to receivers used at fixed locations. The fixed receivers use highly directional antennas that are pointed at the transmitting antenna. Point-to-multipoint operations are generally used for one-way distribution of communications, including, for

example, data and video programming, but two-way voice and data operation are also being developed and used. Fixed services are generally exposed to a constant fixed interference environment characterized by the location of specific operations. We request comment on the need for interference immunity guidelines/standards for fixed terrestrial receivers in light of our changing approach to spectrum management, particularly with regard to licensing of frequencies on a geographic basis. We seek comment and information on the following questions concerning minimum interference immunity guidelines/standards for fixed terrestrial facilities:

—We recognize that in many cases, fixed terrestrial facilities, particularly those used for point-to-point operations, are designed for high reliability. Do existing design features for ensuring high reliability include measures for immunity to interference?

—We also recognize that certain terrestrial point-to-point and point-to-multipoint receivers are designed to accommodate a wide bandwidth (*e.g.* Cable Television Relay Stations that deliver 80 video channels or more.) The receivers of such systems, by design, have little interference immunity. Should immunity guidelines/standards apply to such receivers?

—Should fixed terrestrial receivers be subjected to less stringent minimum interference immunity performance requirements than receivers used with other types of services, given the lesser variation in operating environment conditions generally experienced in the course of fixed operation?

—If minimum interference immunity performance guidelines/standards would be appropriate for fixed terrestrial service receivers, what minimum parameter values should be specified and how would those minimums compare to the performance of existing equipment used with these services?

31. *Broadcast services*—The broadcast AM, FM, and television services operate much like fixed point-to-multipoint services, in that many consumer radios and television sets receive one-way communications from one or more fixed transmitter sites. However, the technical quality of service provided by different models of radio and television receivers varies to some extent, depending on the design of the device. These variations generally reflect manufacturers' perceptions of user demand balanced against cost/pricing factors. For example, the research conducted in response to the low power FM radio proceeding indicated that lower cost FM receivers may provide more limited service capabilities. Generally, allowing manufacturers to determine the performance capabilities of broadcast receivers, including the performance of their tuning/signal acquisition sections, historically has yielded product models that provide satisfactory service for consumers at attractive price levels.

32. Recognizing the factors, we request comment on the desirability of developing minimum interference immunity performance specifications for broadcast receivers. In considering minimum immunity specifications for broadcast receivers, it is not our intent to reverse our longstanding practice of allowing the market to determine the performance of broadcast receivers, with the Commission stepping in only where obvious deficiencies appear that could disrupt the general reception of service. Rather, we believe that guidelines, applied on a voluntary basis, could perhaps lead to the marketing of product models with high interference immunity that consumers could purchase to meet their performance needs. Such models might be particularly desirable for consumers to receive quality services.

33. Recently, the Commission selected in-band-on-channel (IBOC) as the technological approach for terrestrial digital audio broadcasting and permitted AM and FM radio broadcasters to commence digital operations on an interim basis using the hybrid IBOC systems developed by iBiquity Digital Corporation. It is expected that hybrid analog and digital audio broadcasting will continue for at least a decade. In light of this, we ask the following questions about AM and FM receivers:

—What minimum interference immunity parameters should be established for analog and analog/digital (hybrid) AM and FM receivers?

—What would be the additional costs to consumers of radio receivers that would provide interference immunity based on such established guidelines?

—What protection, if any, should be afforded the millions of analog radio receivers now in use and available for sale?

—How should consumers be informed of differences in radio receiver immunity performance? Would a recognizable label or symbol on a receiver assist consumers in identifying equipment with improved performance?

34. We request comment on the following questions relating to the development and implementation of minimum interference immunity guidelines for broadcast television receivers:

—What minimum interference immunity parameter values should be specified for DTV broadcast receivers and how would those minimums compare to the performance of existing equipment used in this service?

—What would be the additional costs to consumers of DTV receivers that would provide interference immunity as specified in established guidelines?

—How should consumers be informed of differences in broadcast receiver interference immunity performance?

35. We also ask for comment on an approach that would provide a fast-track for the development and implementation of voluntary receiver performance standards for broadcast DTV receivers. Television broadcast industry representatives, including the National Association of Broadcasters (NAB), the Association for Maximum Service Television (MSTV), and Sinclair Broadcast Group, Inc. (Sinclair), have requested that we impose minimum performance thresholds on DTV receivers with respect to receiver sensitivity (noise figure and carrier-to-noise ratio), selectivity (co-channel and adjacent channel desired-to-undesired signal ratios), dynamic range, and multipath tolerance (adaptive equalizer performance). While we have denied these requests in the context of mandatory performance standards, and are herein dismissing a Petition for Reconsideration in this regard from Sinclair, we do believe that it is important that we continue to encourage manufacturers to provide adequate tuning capability for broadcast DTV signals, to monitor the performance of DTV receivers as they are introduced to the market, and to intervene if performance is found lacking in specific areas. We also believe that DTV receiver specifications may be useful in this effort as voluntary standards.

36. In this regard, we believe there could be benefit to an approach that would encourage the development of minimum performance guidelines for DTV receivers and enable manufacturers to market a special category of receivers that meet such guidelines. Under the approach we are suggesting, industry parties representing broadcasters, consumer electronics manufacturers, consumers, and others as appropriate, would identify the relevant DTV receiver performance parameters,

develop appropriate minimum performance specifications for those parameters, and publish them. Receivers that meet these specifications could then be clearly marked with a recognizable label or symbol to identify them as complying with industry accepted standards for quality reception. Such identification would allow consumers to easily identify high performance products and manufacturers/retailers to emphasize the features of those products to encourage consumers to purchase them. As part of this approach, the Commission could include reference to the minimum performance standards in its rules and provide that only models that comply with these voluntary standards could be marketed as complying with the industry standards for performance quality or other terminology as might be defined through our rule making process. We request comment on this approach and suggestions for alternative approaches that would provide for implementation of minimum performance specifications for DTV receivers on a voluntary basis. We also request comment on the timeframes that would be required for an industry group to develop recommendations for improved receiver performance. We recognize that digital broadcast tuners will soon become mandatory in many television receivers and the corresponding need to move expeditiously if these standards are to be available in a timely fashion. We request comment on whether an industry group tasked with developing receiver guidelines could be convened within a three month period, and whether recommendations could be developed within six to nine months after that. We will also continue to encourage the inclusion of adequate reception quality in DTV receivers and to monitor the performance of DTV receivers in this regard through efforts to be conducted by our DTV Task Force, Media Bureau, and Office of Engineering and Technology.

The Impact of Minimum Performance Specifications for Receiver Immunity on Innovation and the Marketplace

37. Receiver interference immunity performance specifications have the potential to impact receiver markets in various ways depending on how they are implemented. At the mildest level of impact, any performance specifications may create product differentiation that is generally desirable for consumers/users. For example, voluntary industry guidelines that imply, or define, that compliant products are better or more desirable than those that are not compliant would create product differentiation. At the same time, the cost of producing compliant devices might be higher than the cost of producing non-compliant devices, resulting in higher prices for compliant products. Consumers/users would ultimately determine whether the compliant products are successful, based on whether they would be willing to pay any higher prices that might be charged for the enhanced performance of those products. At the highest level of impact, mandatory standards with which all products must comply could be expected to result in better, presumably more desirable, products that again might cost more to produce. However, mandatory standards could also stifle innovation by restricting the introduction of products with otherwise desirable new features that are inconsistent with the standards. The time and expense associated with changing mandatory standards can also tend to stifle innovation. The purchasers of products subject to mandatory standards would decide whether the devices succeed or fail in the market. For example, if prices were too high or other features were adversely affected, consumers/users might shift to an alternative communications service. We request comment on the impacts of receiver immunity performance specifications on innovation and markets for receiver equipment. Commenting parties are specifically asked to respond to the following questions:

—What effects would interference immunity performance specifications, in the form of either voluntary guidelines or mandatory standards, have on innovation in equipment design, performance (especially with regard to performance not addressed by specifications) and features?

—What effects would such specifications, again in the form of either voluntary guidelines or mandatory standards, have on receiver markets in terms of cost of production, price and availability of equipment, and user demand?

—What aspects of specifications would have the greatest impacts on innovation and markets and what steps could be taken to minimize or mitigate their impacts.

—To what extent should assessments of the impact on innovation and markets be a factor in the processes that define guidelines and standards?

The Current Receiver Environment

38. The current population of radio receivers generally is subject only to rules limiting the amount of unintentional emissions they may radiate. Thus, existing receivers are, for the most part, built to provide levels of interference immunity as determined necessary by their designer/manufacturer to provide satisfactory service. This has, of course, resulted in a wide range of immunity performance across products used within the same services and across services. We seek to develop information describing the interference immunity characteristics of receivers used in the various radio services. We ask for comment and information in response to these specific questions:

—How do existing receivers used with the various radio services perform with regard to each of the immunity attributes discussed above?

—How many units with these capabilities are currently in service?

—What is the expected remaining service life of existing receivers?

Treatment of Existing Receivers

39. There are literally billions of receivers currently in use with the various radio services. Depending on the extent to which new receiver interference immunity performance guidelines/standards might become central to particular spectrum policies, these existing receivers could pose impacts to our new spectrum management policies ranging from none to significant. There are a range of possible approaches that could be adopted for treatment of existing receivers, and the appropriate approach to apply would depend on a variety of circumstances. For example, if we were to adopt the guidelines approach for quality DTV receivers discussed and did not change pertinent channel allotment or other technical criteria, existing DTV receivers and new units of these same or similarly performing models would pose no impact on our spectrum policies. On the other hand, if we were to find it necessary to reclaim a portion of the spectrum used by a service, as we have done in the case of the broadcast auxiliary service at 1990–2110 MHz, and needed to support the same number of operations in the remaining spectrum, it might be necessary to require or provide incentives to users to switch to a new technology or more efficient receiver design that complies with minimum interference guidelines/standards and to cease using existing equipment.

40. Looking at this subject more generically, we observe that in situations where we adopted spectrum policies that assumed receivers performed in accordance with a given set of interference immunity

specifications, it is likely that many of the existing receivers could continue to provide satisfactory service. That is, the interference conditions that would necessitate the use of receivers meeting the applicable guidelines/standards would not be present everywhere, and in locations where potentially interfering signals were not present or were present at levels within the capabilities of existing receivers, those units could provide satisfactory service. Accordingly, one approach would be to simply allow users to change to new receivers as they encountered interference. Of course, where the service would be of more critical importance, it might be necessary to require replacement of receivers, and ''middle ground'' approaches that provided for a transition to mandatory use of new receivers are possible also. We request comment and suggestions on the matter of how to treat existing receivers that do not comply with any new receiver minimum interference immunity specifications that may be developed, and how the size of the installed receiver base should affect the development of receiver interference immunity performance guidelines/standards. We specifically ask that interested parties address the criteria that we should use in making determinations to take actions that would involve the involuntary replacement of receivers, either on a rapid or transitional basis, for example, in the case of public safety, other services involving safety-of-life or property, or services involving security of the public or national security. In the event such an action were determined to be necessary, what would be an appropriate phase-in time period?

41. This is an exempt notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during any Sunshine Agenda period. *See generally* 47 CFR 1.1200(a), 1.1203, and 1.1204(b).

42. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

43. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Washington, DC 20554.

44. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Hugh L. Van Tuyl, Office of Engineering and Technology, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room 7–A162, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number, in this case ET Docket No. 03–65, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

45. Comments and reply comments will be available for public inspection during regular business hours in the Reference Information Center (Room CY–A257) of the Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor.

46. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).''

Ordering Clauses

47. Pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r) and 307, this Notice of Inquiry *is hereby adopted.*

48. Pursuant to § 1.429(i) of the Commission's rules, 47 CFR 1.429(i), the Petition for Reconsideration of the *Second Report and Order and Second Memorandum Opinion and Order* in MM Docket No. 00–39 submitted by Sinclair Broadcast Group, Inc. *is dismissed* as repetitive for the reasons indicated in the Notice of Inquiry.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–10951 Filed 5–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 622

[I.D. 040703A]

RIN 0648–AN87

Fisheries of the South Atlantic; Pelagic Sargassum Habitat in the South Atlantic; Fishery Management Plan; Correction

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

ACTION: Notice of availability of a revised fishery management plan for the pelagic *Sargassum* habitat of the South Atlantic Region (FMP); correction.

SUMMARY: This document contains a correction to the notice published on Thursday, April 17, 2003. The notice announced the availability of a fishery management plan for pelagic *Sargassum* habitat of the South Atlantic region.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Comments on the FMP must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the FMP should be sent to the South Atlantic Fishery

Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; fax 843–769–4520; e-mail: *safmc@safmc.net*.

Correction

Accordingly, the publication on April 17, 2003, FR Doc 03–9490 is corrected as follows:

On page 18942, column 2, paragraph 2, line 5 remove the text ''2°'' and add in its place ''20°''.

Dated: April 25, 2003.

Richard W. Surdi,

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

[FR Doc. 03–10802 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 86

Monday, May 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability—2002 Livestock Compensation Program II

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of Commodity Credit Corporation (CCC) funds provided under the Agricultural Assistance Act of 2003 to implement the 2002 Livestock Compensation Program II (LCP–II). Livestock for which payments were made under the 2002 Livestock Compensation Program I (LCP–I) will not be eligible to generate claims under LCP–II. Other offsets can apply.

DATES: (1) The Farm Service Agency (FSA) will begin accepting applications on April 1, 2003.

(2) The application deadline will be determined by the Deputy Administrator for Farm Programs of FSA, (Deputy Administrator).

(3) Payments will be issued to applicants meeting all eligibility requirements beginning May 1, 2003, or as determined by the Deputy Administrator.

FOR FURTHER INFORMATION CONTACT: Lynn Tjeerdsma, Chief, Emergency Preparedness and Programs Branch, USDA/FSA, 1400 Independence Ave. SW., STOP 0517, Washington, DC 20250–0522; telephone (202) 720–7641; facsimile (202) 690–3610; electronic mail: *Lynn_Tjeerdsma@wdc.usda.gov.* Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires consultation with State and local officials.

Environmental Compliance

Due to the weather-related disasters or other emergency requiring the Agency to provide immediate relief, sufficient time was not available to complete an environmental review prior to implementing the proposed action. Therefore, an environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Paperwork Reduction Act

Section 217 of the Agricultural Assistance Act of 2003 requires that this program be promulgated and administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. This means that the information to be collected from the public to implement this program and the burden, in time and money, that the collection of the information would have on the public do not have to be approved by the Office of Management and Budget or be subject to the 60-day public comment period required by 5 CFR 1320.8(d)(1).

Background

A Notice of Funds Availability was published in the **Federal Register** on Thursday, October 10, 2002, (67 FR 63070) announcing the availability of $752 million ($185 million was added at a later date, bringing the total available to $937 million) under section 32 of the Act of August 24, 1935 (section 32) to implement the 2002 Livestock Compensation Program, or 2002 LCP–I. Livestock feed supplies and grazing availability were significantly reduced due to weather-related disasters or other emergency conditions that occurred throughout much of the United States during 2001 and 2002. The 2002 LCP–I provided immediate financial assistance to owners or cash lessees of eligible beef, dairy, buffalo, beefalo, sheep and goats in certain States and counties to offset losses due to drought. Funds were provided to eligible applicants only in those counties declared under a Secretarial disaster designation for drought made after January 1, 2001, or submitted to the Secretary of Agriculture, by the Governor of a State or a Tribal Leader of an Indian Reservation, no later than September 19, 2002, and subsequently approved.

Recently, in section 203 of the Agricultural Assistance Act of 2003 (2003 Act) Pub. L. 108–7, enacted on February 20, 2003, Congress provided that the funds of the Commodity Credit Corporation should be used to carry out what amounts to a supplement to LCP–1, not in the sense of granting more payments to those who received payments before, but by increasing the persons who are eligible to receive payments in the program. That supplemental program is referred to in this notice as the 2002 Livestock Compensation Program, the 2002 LCP–II or, simply, LCP–II.

Eligibility criteria and application procedures for the new recipients are set out below. FSA will determine the eligibility of applicants and the amount of assistance that will be paid. It bears repeating that livestock that generated payment under LCP–I cannot generate claims under the expanded program. There is, still, another limitation on these new payments. That is, a person's payment eligibility under LCP–II, to the extent it is otherwise allowed by this notice, will be reduced by the payments received by that person under the 2002 Cattle Feed Program announced on September 3, 2002 (67 FR 56260) and vice versa. Also, payment received by a producer under LCP–II and, as applicable, under the 2002 Cattle Feed Program as announced on September 3, 2002 (67 FR 56260) will reduce the benefits available for a person with respect to the separate but also new ''livestock assistance program'' provided for in section 203(b) of the 2003 Act. These offsets among programs are specifically provided for in section 203(c) of the 2003 Act.

As indicated, section 203(a) of the 2003 Act, basically, expands the LCP–I program. It does this by providing for

using Commodity Credit Corporation funds to carry out the original program for, to the extent not already covered, all applicants who conducted a livestock operation that is physically located in any county named as a primary disaster area (which includes areas named under a Presidential disaster declaration, not just a Secretarial disaster designation, as in LCP) for any qualifying natural disaster (not just drought, as in LCP) in calendar years 2001 and 2002 or which were submitted to the Secretary or President for that designation no later than February 20, 2003, and were subsequently approved as primary disaster counties. The statute adds that for all of these new claims, however, payments can only be made to the extent that the claim meets all other eligibility requirements established by the Secretary in the original program (which had a different funding source).

Accordingly, most of the eligibility criteria will be the same for LCP–II as for LCP–I, except those that expand the program as indicated above. Those new terms include tying the claims back to livestock operations as they existed, including the numbers of eligible livestock to June 1, 2002.

Terms for LCP–II are set out in this notice, and for the sake of completeness, the original program terms, to the extent that they carry over, are repeated here. These include payment limitations and the exclusion of claims for persons with gross revenue from all sources over a certain level (subject to certain conditions relating to the percentage of a person's revenue derived from farming and ranching). It bears emphasis that livestock that generated payment under LCP–I cannot be used to receive claims under LCP–II. As indicated and as in LCP–I, the critical date of ownership is June 1, 2002. Payments will reflect the number of eligible animals owned by the applicant as of that date.

Also, by reference to section 10806 of the Farm Security and Rural Investment Act of 2002 (21 U.S.C. 321d), the statute added catfish claims to those that can be paid under LCP. However, implementation of the catfish provisions were modified in section 2103 of Public Law 108–11, the Emergency Wartime Supplemental Appropriations Act, 2003 (117 Stat. 559). This section provides, in referring to catfish producers as eligible applicants, that ''to provide assistance to eligible applicants under paragraph (2)(B), the Secretary shall provide grants to appropriate departments of agriculture (or other appropriate State agencies) that agree to provide assistance to eligible applicants.'' This will require special provisions which are not yet ready. Accordingly, the assistance to catfish producers required by the 2003 Act will not be administered under this notice.

Terms of the Program—The 2002 Livestock Compensation Program–II.

I. Definitions

The following definitions are applicable to this program, which shall be referred to here as 2002 LCP–II:

Adult beef bulls means male bovine livestock, to be used for breeding purposes, that were two years old on or before June 1, 2002.

Adult beef cows means female bovine livestock, used for the purpose of providing meat for human consumption, that have delivered one or more offspring, at any time before June 1, 2002.

Adult buffalo and beefalo bulls means male livestock of those breeds, used for the purpose of providing meat for human consumption, to be used for breeding purposes that were two years old on or before June 1, 2002.

Adult buffalo and beefalo cows means female livestock of those breeds, used for the purpose of providing meat for human consumption, that have delivered one or more offspring, at any time before June 1, 2002.

Adult dairy bulls means male bovine livestock, to be used for breeding dairy cows, that were two years old on or before June 1, 2002.

Adult dairy cows means female bovine livestock, used for the purpose of providing milk for human consumption, that have delivered one or more offspring, at any time before June 1, 2002.

Agency means the Farm Service Agency, its employees, and any successor agency.

Applicant means the individual or business entity applying for assistance.

Application means the Form CCC–370, Livestock Compensation Program (LCP–II) Application. The CCC–370 is available at FSA county service centers and on the Internet.

Beef bulls means male bovine livestock, used for the purpose of providing meat for human consumption, that as of June 1, 2002, weighed more than 500 pounds and were less than two years old.

Beef replacement heifers and non-breeding heifers means female bovine livestock, used for the purpose of providing meat for human consumption, that as of June 1, 2002, weighed more than 500 pounds and had never delivered any offspring.

Beef steers means neutered male bovine livestock, used for the purpose of providing meat for human consumption, that weighed more than 500 pounds on or before June 1, 2002.

Buffalo and beefalo bulls means male livestock of those breeds, used for the purpose of providing meat for human consumption, that as of June 1, 2002, that weighed more than 500 pounds and were less than two years old.

Buffalo and beefalo replacement heifers and buffalo and beefalo non-breeding heifers means female livestock of those breeds, used for the purpose of providing meat for human consumption, that as of June 1, 2002, weighed more than 500 pounds and had never delivered any offspring.

Buffalo and beefalo steers means neutered male livestock of those breeds, used for the purpose of providing meat for human consumption, that weighed more than 500 pounds on or before June 1, 2002.

Business entity means a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Dairy bulls means male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that as of June 1, 2002, weighed more than 500 pounds and were less than two years old.

Dairy replacement heifers and dairy non-breeding heifers means female bovine livestock, of a breed used for the purpose of providing milk for human consumption, that as of June 1, 2002, weighed more than 500 pounds and had never delivered any offspring.

Dairy steers means neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed more than 500 pounds on or before June 1, 2002.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Disaster county means a county included in the geographic area covered by a qualifying natural disaster declaration for calendar year 2001 or calendar year 2002 for which the request for such designation was submitted during the period beginning January 1, 2001, and ending February 20, 2003, and was subsequently approved. Contiguous counties are not considered to be disaster counties unless they themselves qualified on their own or a disaster county.

Eligible livestock means certain beef and dairy cattle, buffalo and beefalo, sheep, and goats that an eligible producer owned, or cash-leased for 90 or more days, and that were owned or subject to a cash lease on June 1, 2002. Certain beef and dairy cattle, buffalo and beefalo, sheep, and goats subject to

a contract for purchase by the applicant, that was negotiated prior to June 1, 2002, are eligible livestock.

Eligible livestock producer means an owner or lessee of eligible livestock whose livestock operation headquarters is physically located in a disaster county, and who did not receive a payment for the eligible livestock under the 2002 LCP–I program, that being the original Livestock Compensation Program, announced in the **Federal Register** October 10, 2002 (67 FR 63070).

Goat means a domesticated, bearded, horned, ruminant mammal of the genus Capra, including Angora goats.

Ineligible livestock means any beef cattle, buffalo, beefalo, dairy cattle, sheep, or goats that were considered eligible livestock and for which payment was received under the 2002 LCP–I, or on June 1, 2002, were not owned or subject to a cash lease or under contract to be purchased by an applicant; and are any beef cattle, buffalo, and dairy cattle that, as of June 1, 2002, weighed less than 500 pounds; and also include livestock owned by an ineligible livestock producer.

Ineligible livestock producer, as determined by the Deputy Administrator, means an entity or individual who received payment for livestock under the 2002 LCP–1; who does not own eligible livestock; who slaughters, processes, and packs livestock meat into meat and meat products; and who is livestock owner that, for monetary reimbursement or other gain, provides feed and facilities for livestock owned by another person on a custom feeding basis; or is a livestock owner whose livestock operation headquarters is not located in an disaster county.

Qualifying natural disaster means:

(1) A natural disaster declared by the Secretary under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or

(2) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*).

Sheep means a domesticated, horned, ruminant mammal of the genus Ovis, bred for wool, edible flesh, or skin.

II. Appeals

An applicant may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR parts 11 and 780.

III. Eligibility Requirements

Applicants must meet all of the following requirements to be eligible for the 2002 LCP–II:

1. *Timely application.* The applicant must submit a signed form CCC–370 completed to the best of the applicant's ability to FSA, no earlier than April 1, 2003, and no later than such date as announced by the Deputy Administrator.

2. *Livestock owner or lessee.* The applicant must own, be subject to a contract to purchase, or cash-lease, eligible livestock.

3. *Applicant's operation must be physically located in a disaster county.* The applicant's livestock operation headquarters must be physically located in a disaster county on June 1, 2002.

IV. Gross Revenue Limitation

A person, as defined in 7 CFR part 1400, who has annual gross revenue in excess of $2.5 million shall not be eligible to receive assistance under the 2002 LCP–II. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue of that person from all sources.

V. Payment Limitation

The total amount of benefits that a person, as determined in accordance with 7 CFR part 1400, shall be entitled to receive under the 2002 LCP–II may not exceed $40,000.

VI. Amount of Assistance

The amount of assistance for 2002 LCP–II for the livestock covered shall be at the same rates for the eligible livestock covered under the 2002 LCP, as they were published in the **Federal Register** October 10, 2002 and set out below.

VII. Applicant Certification of Eligible Livestock

Eligible livestock must be certified by owner or lessee on the CCC–370. The applicant will report to FSA and provide proof of the number of eligible livestock and, as applicable, that died or were sold after June 1, 2002.

VIII. Payment Eligibility

To be eligible for payment under the 2002 LCP II, as determined by the Deputy Administrator, the applicant must, as of June 1, 2002, be an owner, lessee, or under contract to purchase eligible livestock, whose livestock headquarters operation is physically located in a disaster county; who has submitted and subsequently received FSA County Committee approval on CCC–370, and who meets all other eligibility requirements. Livestock are not eligible to generate a claim under LCP–II to the extent they generated a claim under LCP–I. Further a producer shall not be eligible to receive or retain a payment under this LCP–II program to the extent that the producer has received payment under the 2002 Cattle Feed Program announced by the Secretary on September 3, 2002 (67 FR 56260), or the Livestock Assistance Program established under section 203(b) of the Agricultural Assistance Act of 2003. References in this paragraph to LCP–I are to the original Livestock Compensation Program as announced by the Secretary on October 10, 2002 (67 FR 63070).

IX. Payment Amounts

Adult beef cows and bulls, and adult buffalo and beefalo cows and bulls, as defined in Part I: $18.00 per head.

Adult dairy cows and bulls, as defined in Part I: $31.50 per head.

Beef, dairy, buffalo and beefalo replacement heifers, steers, non-breeding heifers, and bulls, as defined in Part I: $13.50 per head.

All sheep and goats, as defined in Part I, born prior to June 1, 2002: $4.50 per head.

X. Contract Liability

All producers receiving a share of the LCP–II payment are jointly and severally liable for program violations and resulting repayments, if applicable.

XI. How the 2002 LCP–II Will Work

Applications will be accepted in FSA county offices beginning on April 1, 2003. On the LCP–II application, all owners of livestock in each livestock operation in a disaster county may apply for payment on one application. Each applicant will provide FSA with, and certify to, the applicant's name and identification number, address, and number and type of eligible livestock. After FSA county committee approval of the LCP–II application, payments will be issued, beginning May 1, 2003, or as determined by the Deputy Administrator, from the FSA county office to each approved livestock producer on the application.

XII. Misrepresentation, Scheme or Device

A person shall be ineligible to receive assistance under this program, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the FSA State or county committee, or an official of FSA, that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of the program operated under this notice;

(b) Made any fraudulent representation with respect to this program; or

(c) Misrepresented any fact affecting a program determination.

XIII. Liens and Claims of Creditors

Any benefit or portion thereof due any person under this program shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person, except agencies of the U.S. Government.

XIV. Power of Attorney

In those instances in which, before the issuance of this notice, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to all programs listed on the form, without limitation, such power will be considered to extend to this program unless by April 1, 2003, the person granting the power notified the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

XV. Administration

Where circumstances preclude compliance due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this notice. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this notice, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute. The 2003 Act funds allocated to CCC to provide assistance under LCP–II have been estimated not to exceed $350 million.

Signed at Washington, DC, on April 23, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–10995 Filed 4–30–03; 12:28 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Thursday, May 22, 2003, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the Emmett City Hall, 501 East Main Street, Emmett, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: April 29, 2003.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 03–10970 Filed 5–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Friday, May 23, 2003, at the Community Center at Mercer View, Room A–4, 8236 Southeast 24th Street, Mercer Island, WA 98040.

The meeting is scheduled from 9 a.m. until 4 p.m. The agenda for the meeting will focus on review and recommendation of field projects to be completed in 2004.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: April 29, 2003.

John Phipps,

Designated Federal Official.

[FR Doc. 03–10971 Filed 5–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of appointment of members and of meeting.

SUMMARY: The Secretary of Agriculture has appointed new members to the Task Force on Agricultural Air Quality. Please see the list at the end of this notice. In addition, the Task Force on Agricultural Air Quality will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Tuesday, May 20, 2003, at 9 a.m., and continue until 4 p.m. and will resume Wednesday, May 21, 2003, from 9 a.m. to 4 p.m. Individuals with written material and those who have requests to make oral presentations should contact the Natural Resources Conservation Service, at the address below, on or before May 7, 2003.

ADDRESSES: The meeting will be held at the Hall of the States Building in Room 333, 444 North Capitol Street, Washington, DC 20001, telephone (202) 624–8570. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA–NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the May 20 and 21, 2003, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at *http://fargo.nserl.purdue.edu/faca.*

2003–2004 Task Force on Agricultural Air Quality—Members

Alabama

Tommy L. Coleman, Alabama A&M University

Arizona

Kevin G. Rogers, Producer

California

Mark P. Boese, San Joaquin Valley Unified Air Pollution Control District
Manuel F. Cunha, Jr., Nisei Farmers League
Robert G. Flocchini, University of California-Davis
Roger Isom, California Cotton Ginners & Growers

Hawaii

Stephanie A. Whalen, Hawaii Agricultural Research Center

Idaho

Dave Roper, Producer
Dar Olberding, Idaho Grain Producers

Illinois

James K. Trotter, Producer

Indiana

Robert N. Jackman, Veterinarian, State Senator
Rita Sharma, Producer

Maryland

Phillip J. Wakelyn, National Cotton Council of America

New York

Douglas Shelmidine, Producer

North Carolina

Viney P. Aneja, North Carolina State University
Garth W. Boyd, Smithfield Foods, Inc.
Joseph Rudek, Environmental Defense
Sally L. Shaver, U.S. Environmental Protection Agency

Oklahoma

Annette H. Sharp, Oklahoma Department of Environmental Quality

Texas

Robert V. Avant, Jr., Texas Food and Fibers Commission
Calvin B. Parnell, Jr., Texas A&M University
John M. Sweeten, Jr., Texas A&M University

Utah

Nan Wankier Bunker, Producer

West Virginia

Timothy Wade Maupin, Cargill Turkey Products

Draft Agenda of the May 20 and 21, 2003, Meeting

A. Welcome to Washington, DC
  1. USDA and NRCS Officials
B. Discussion of Federal Advisory Committee Act (FACA) Rules
C. USDA Update
  - NRCS
  - ARS
  - CSREES
  - FS
D. EPA Update
  - National Academy of Sciences Scientific Assessment
  - Status of the Voluntary Compliance Policy
  - Other Issues
E. New Topics
  - Clean Air Advisory Committee Update
  - Discussion of Goals for Task Force During This Charter
  - External Speaker—to be decided upon
F. Next Meeting, Time/Place
G. Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than May 7, 2003. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than May 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on April 25, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–11040 Filed 5–2–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Otter Creek Watershed, Caldwell County, MO

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: Roger A. Hansen, responsible federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Missouri, is hereby providing notification that a record of decision to proceed with the installation of the Little Otter Creek Watershed project is available. Single copies of this record of decision may be obtained from Roger A. Hansen at the address shown below.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, Missouri 65203, (573) 876–0901.

SUPPLEMENTARY INFORMATION: The project purposes are to provide

agricultural water management (rural water supply); fish, wildlife, and recreational development; and flood control. The planned works of improvement include: One multiple-purpose reservoir, a water intake structure, a raw water line, and recreational facilities.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: April 22, 2003.

Roger A. Hansen,

State Conservationist.

[FR Doc. 03–11039 Filed 5–2–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #316, Animal Mortality Facility; #584, Channel Stabilization; #326, Clearing and Snagging; #317, Composting Facility; #402, Dam; #356, Dike; #554, Drainage Water Management; #552, Irrigation Regulating Reservoir; #436, Irrigation Storage Reservoir; #634, Manure Transfer; #582, Open Channel; #378, Pond; #587, Structure for Water Control; #607, Surface Drainage, Field Ditch; #600, Terrace; and #359, Waste Treatment Lagoon to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm*.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: April 25, 2003.

Dwight A. Towler,

Assistant State Conservationist, Field Operations, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 03–11038 Filed 5–2–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 030328074–3074–01]

Revised Confidentiality Criteria for Bureau of the Census Public Use Data Products

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: General notice.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this Notice to update the criteria used to assess and review public use data products prior to their release. The criteria help ensure that confidential information is not inadvertently disclosed.

DATES: This notice is effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this Notice should be directed to Laura Zayatz, Chair, Disclosure Review Board, Statistical Research Division, U.S. Census Bureau, Room 3209, Federal Building 4, Washington, DC 20233, (301) 763–4955 or by fax at (301) 457–2299.

SUPPLEMENTARY INFORMATION:

Background

Title 13, United States Code, Section 9, requires the Census Bureau to protect the confidentiality of individual respondents. Title 13 also requires the Census Bureau to release information from its data collections to the public. In order to comply with the latter requirement, while protecting respondents' confidentiality, the Census Bureau has developed standard procedures for protecting its data products from disclosure of identifying information. A **Federal Register** Notice (46 FR 22017) published on April 15, 1981, described those procedures.

Since that Notice appeared, some methodological improvements have been introduced and additional formal review has been instituted. Specific changes to the earlier criteria are the following items under the ''Criteria for Releasing Public Use Microdata'' section of this Notice.

- Paragraph (4). To ensure confidentiality protection, the Census Bureau now requires the completion of a Checklist on Disclosure Potential of Data.
- Paragraph (4)(e). To better protect the confidentiality of data, the Census Bureau may require the use of data swapping. This technique is discussed further in that paragraph.
- Paragraph (5). The name of the Microdata Review Panel was changed to the Disclosure Review Board.
- ''Criteria for Releasing Public Use Tabular Data'' section. This entire section is new. In 1995, the routine review performed by the Disclosure Review Board was extended to include tabular data as well as microdata.

Also, the scope of the Disclosure Review Board was enlarged to include setting disclosure limitation rules, monitoring the Census Bureau's adherence to its confidentiality policy requirements, and resolving any problems, questions, and issues not covered by the general criteria described in the earlier **Federal Register** Notice. This Notice updates the information previously published and includes criteria for releasing tabular data as well as microdata.

Confidentiality Criteria for Census Bureau Public Use Data Products

Data Subject to Disclosure Protection

All data released to the public are subject to disclosure protection. These public use data products include both microdata and tabular data. Microdata

are records containing information about individuals or households, or about businesses, with all personal identifiers removed. Tabular data may be frequency counts (*e.g.*, number of Hispanic males) or magnitude data presenting sums of a variable of interest (*e.g.*, total value of sales) from individuals, households, firms, or establishments.

Because some business firms and establishments are selected with certainty, the disclosure risk for economic microdata files can be quite high. For this reason, microdata files containing information on establishments are rarely produced. However, any economic microdata file produced for public release would be subject to disclosure constraints comparable to those provided for individual and household microdata files.

Criteria for avoiding disclosure in data released by the Census Bureau for public use have been the subject of internal research, consultations with stakeholders, and input from experts in disclosure limitation techniques over the past few decades. Based on those findings and subsequent assessments of data needs and disclosure risk, the Census Bureau has established a release policy stating criteria for release. The Census Bureau will apply these criteria to all data products released to the public.

Criteria for Releasing Public Use Microdata

Files of records containing data about households and individuals, or about businesses, can be made available for public use, provided the appropriate disclosure avoidance requirements have been met. For public use microdata about individuals and households, the following conditions must be met:

(1) The records contain no names, addresses, or other unique identifiers.

(2) The records include no geographic or related information that would identify an area of fewer than 100,000 population.

(3) Once a file has been released with one set of geographic identification, the same records cannot be released with different identification if the two geographic schemes in combination identify any area with fewer than 100,000 population.

(4) Specifications for each file (or groups of files) must be reviewed to assure that confidentiality is protected. To do so, the Census Bureau's Checklist on Disclosure Potential of Data must be completed by the data producers and reviewed by disclosure experts at the Census Bureau. (The Checklist is available on the Census Bureau Web site at *http://www.census.gov/srd/sdc/index.html*.) This review may result in:

(a) The removal or reduction in detail of any variable considered likely to identify an especially small and visible population (*e.g.*, persons with high income or rare demographic characteristics).

(b) The use of a minimum area population criterion that is higher than 100,000 for that particular file(s) (*e.g.*, for a file with neighborhood characteristics).

(c) The introduction of ''noise'' (*i.e.*, small amounts of random variation) into selected data items.

(d) The subsampling of records so that public-use microdata do not include all respondents included in a large survey.

(e) The use of data swapping (*i.e.*, locating pairs of matching households in the database, based on a set of predetermined variables, and swapping those households across geographic areas to add uncertainty for households with unique characteristics).

More information on these methods is provided on the Census Bureau's Internet site at *http://factfinder.census.gov/home/en/confidentiality.html#microdata.*

(5) The Disclosure Review Board concurs that the data meet disclosure avoidance criteria for public release.

Comparable criteria will be developed and applied in the event that microdata about businesses are being considered for public release.

Criteria for Releasing Public Use Tabular Data

Although tabular data products had routinely undergone disclosure protection, it was not centralized. This Notice documents standardized procedures now in use that have been adopted to protect the confidentiality of information in frequency counts and magnitude data. Tabulations containing data about households, individuals, firms, and establishments can be made available for public use provided that:

(1) Specifications for each file (or groups of files) are reviewed to assure that confidentiality is protected for any response provided by an individual, a household, a firm, or an establishment. To do so, the Census Bureau's Checklist on Disclosure Potential of Data is completed by the data producers and reviewed by disclosure experts at the Census Bureau. (The Checklist is available on the Census Bureau Web site at *http://www.census.gov/srd/sdc/index.html.*) This review may result in:

(a) The removal or reduction in detail of any variable in a tabulation considered likely to identify an especially small and visible population or group of establishments.

(b) The introduction of ''noise'' into selected data items.

(c) The use of data swapping for selected households.

(d) The use of rounding in selected tabulations.

(e) The use of thresholds in selected tabulations.

(f) The use of cell suppression (*i.e.*, not displaying certain cell values that would identify unique cases in a table or disclose an individual response; often complementary cells also are blanked out to prevent disclosures by subtracting the balance from the total for a given row or column).

(2) The Disclosure Review Board concurs that the data meet disclosure avoidance criteria for public release.

Dated: April 29, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–10952 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MARCH 20, 2003–APRIL 22, 2003

Firm name	Address	Date petition accepted	Product
Copper River Fine Seafood, Inc. dba Copper River Seafoods.	1 Cannery Row, Cordova, AK 99574	03/24/03	Salmon.
LaRocca's Seafood Specialties, Inc	P.O. Box 725, Half Moon Bay	04/15/03	Seafood processing—salmon, trout, sturgeon, scallops, albacore and black cod.
Sandhill Packing Company, LLC	800 West Cotta Road, Lodi, CA 95242.	04/02/03	Asparagus.
SEM-COM Company, Inc	1040 North Westwood Avenue, Toledo, OH 43607.	03/28/03	Specialty glass.
Ace Wire Spring & Form, Inc	1105 Thompson Avenue, Mckees Rocks, PA 15136.	04/02/03	Custom designed machined springs and clips.
Aarubco Rubber Co., Inc	259 2nd Street, Saddle Brook, NJ 07663.	04/09/03	Rubber covered belts, rollers and other rubber molded products and specialty items.
Manor Tool and Manufacturing Company.	9200 Ivanhoe Street, Schiller Park, IL 60176.	04/02/03	Stamped, machined, and fabricated metal components for the auto, furniture, hand tools and telecommunications and railroad industries.
DJC Design Studio, Inc	227 Sheep Davis Road, Concord, NH 03301.	04/02/03	Throws, pillows, bed coverings and apparel and accessories.
Contract Glass Service, Inc	225 Andover Street, Wilmington, MA 01887.	04/01/03	Tempered glass for residential and commercial applications.
Ronlo Engineering LTD, Inc	955 Flynn Road, Camarillo, CA 93012.	04/02/03	Precision hydraulic components for aerospace and oil field industries.
TP Cycle and Engineering, Inc	5 Francis J. Clark Circle, Bethel, CT 06801.	03/28/03	V-twin and other motorcycle engines and parts.
Lorax, Inc	2588 Island View Lane, Lummi Island, WA 98262.	04/02/03	Salmon.
Port City Plate, Inc. dba Por City Metal Services.	3101 Charles Page Boulevard, Tulsa, OK 74127.	04/14/03	Fabricated steel industrial heat exchange units.
Stanek Tool Corporation	2500 S. Calhoun Road, New Berlin, WI 53151.	04/02/03	Fixtures for metalworking machine tools.
Stanley Engineering Co., Inc	180–F Penrod Court, Glen Burnie, MD 21061.	04/07/03	Precision machined parts for satellite communication and telecommunication.
ASKO, Inc	P. O. Box 355, Homestead, PA 15120.	04/07/03	Shear knives, blades and tooling.
OAR Tool & Die, Inc., dba OAR Moldworks.	145 Carolina Avenue, Providence, RI 02905.	04/14/03	Injection molds for plastics and soft- and hard-tool prototype injection molds.
Cox Wholesale Seafood, Inc	5806 N. Occident Street, Tampa, FL 33614.	04/02/03	Shrimp.
Wall Industries, Inc	1615 N. Lee Street, Spencer, NC 28159.	04/11/03	Rope of synthetic braided fibers.
Cabrito Market, Inc	¾ Mile N. Bentsen Palm Drive, Mission, TX 78572.	04/10/03	Goat meat.
Precise Cables, Inc	1567 Skyway Drive, Longmont, CO 80504.	04/07/03	Custom cables and cable harnesses.
Tibor Machine Products, Inc	6350 West Birmingham, Chicago Ridge, IL 60415.	04/09/03	Precision machined metal components of engines and drive axels for construction and off-highway vehicles.
Dynamic Tool & Design, Inc	W133 N5180 Campbell Drive, Menomonee Falls, WI 53051.	04/11/03	Injection molds for plastics.
Ray Products, Inc	1212 Corporate Drive, Parsons, KS 67357.	04/09/03	Paperboard boxes and cartons.
Heartland Fabrication and Machine, Inc.	1695 SE Decker Street, Lee's Summit, MO 64081.	04/14/03	Aluminum parts for pump housings and valves.
Howell Foundry, L.L.C	P. O. Box 2487, St. Francisville, LA 70775.	04/15/03	Components for pumps for use in pulp and paper production.
Haynes Corporation	3581 Mercantile Avenue, Naples, FL 34104.	04/15/03	Components for fuel-injection pumps for compression-injection engines.
B & W Oilfield Manufacturing, Inc	1333 SE 25th Street, Oklahoma City, OK 73129.	04/22/03	Flanges and flange support parts.
James Kyle dba F/V Home Shore	4102 Linnell Road, Deming, WA 98224.	04/22/03	Salmon.
Megan Corazza dba F/V Sonya M	P.O. Box 1320, Homer, AK 99603	04/22/03	Salmon.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request

a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 29, 2003.

Brenda A. Johnson,

Technical Assistance Specialist, Planning and Development Assistance Division.

[FR Doc. 03–10972 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Conservation Representative Alternative and Education Representative Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by May 19, 2003.

ADDRESSES: Application kits may be obtained from Nancy Berenson at Channel Islands National Marine Sanctuary, 115 Harbor Way, Suite 150, Santa Barbara, CA 93109. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nancy Berenson at (805) 884–1469, or nancy.berenson@noaa.gov, or visit the CINMS Web site at: *http://www.cinms.nos.noaa.gov.*

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 20 members and 21 alternates, including ten government agency representatives and ten members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Section 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 28, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–10953 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042303A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given of the availability of a Routine Road Maintenance Program (RMP) that the City of Portland, Oregon, Office of Transportation, has submitted pursuant to the Endangered Species Act (ESA). NMFS promulgated a protective rule for 14 threatened salmon and steelhead Evolutionarily Significant Units (ESUs). The RMP would affect seven ESUs of threatened salmonids identified in the **SUPPLEMENTARY INFORMATION**: The 4(d) rule provides for limits on ESA take prohibitions for the various activities set out in the rule. The RMP addresses the limit for routine road maintenance activities of any state, city, county or port. This Notice serves to notify the public of the availability of the City of Portland RMP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft RMP must be received no later than 5 p.m. Pacific Standard Time (see **ADDRESSES**) on June 4, 2003.

ADDRESSES: Written comments should be sent to Dr. Nancy Munn, Habitat Conservation Division, National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, Oregon 97232.

Comments may also be faxed to 503–231–6893. Copies of the entire RMP are available on the Internet at: *http://www.portlandtransportation.org/CurrentNews/InterimRoadMaintenanceProgram.pdf*, or from the address posted on that site. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Munn at phone number: 503–231–6269, or e-mail: *nancy.munn@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to the following seven threatened salmon ESUs:

Chinook salmon (*Oncorhynchus tshawytscha*); threatened Upper Willamette River (UWR), and Lower Columbia River (LCR).

Steelhead (*Oncorhynchus mykiss*); threatened Upper Willamette River (UWR), Lower Columbia River (LCR), Snake River Basin (SRB), and Middle Columbia River (MCR).

Chum salmon (*Oncorhynchus keta*); threatened Columbia River (CR).

Background

The City of Portland, Office of Transportation, submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened within the boundaries of the City of Portland. The RMP was designed so that routine road maintenance activities would be protective of salmonids and their habitat.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422, July 10, 2000) under limit 10(i), take prohibitions to threatened

species of salmonids do not apply to routine road maintenance activities of a state, county, city or port that complies with a program that is substantially similar to that contained in the Oregon Department of Transportation (ODOT) Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices (Guide, July 1999), and that is determined to meet or exceed the protections provided in the ODOT Guide. NMFS may approve a routine road maintenance program of any state, city, county or port that contains management practices that are equivalent to or better than those in the ODOT Guide. Prior to final approval of a routine road maintenance program, NMFS must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

The City of Portland RMP submittal includes a cover letter addressed to D. Robert Lohn, Regional Administrator of NMFS, and a statement of commitment from the City of Portland to implement the RMP. In Part 1, the RMP provides the responsible entity and legal authority for the program and provides a description of the program, including a comparison with ODOT's best management practices. In Part 2, the RMP provides a description of the geographic area to which the program applies, including an analysis of the environmental baseline of the watersheds of the lower Columbia River and the lower Willamette River, and tributaries to the Willamette River within the City of Portland. Part 2 also includes maps and tables that depict various habitat parameters such as culverts that block fish passage, riparian condition, and water quality condition. In Part 3 , the RMP describes the listed species distribution and status, including distribution maps for steelhead and chinook. The RMP also provides information on fish use within lower Willamette River and its tributary. A bibliography of relevant reports are provided in Part 4. In Part 5, the RMP makes an affirmative conclusion that the program is substantially similar to or better than ODOT's program, and summarizes the training, monitoring, and reporting elements of the RMP.

The RMP defines what activities are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact. The City of Portland best management practices (Part 1b) includes three activities that differ from ODOT's. Best management practices for surface work, sweeping/flushing, and snow/ice removal/sanding differ from ODOT's best management practices. The RMP provides information to support the assertion that the City of Portland's practices for these activities are as effective or more effective than ODOT's practices at protecting fish and their habitat. Approval or disapproval of the RMP will depend on NMFS findings after public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 424222, July 10, 2000) identifies specific categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 424222, July 10, 2000).

Dated: April 28, 2003.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11061 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 000616180–3103–07]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and long-standing capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agencies' contributions to that national effort.

All proposals must be submitted in accordance with the requirements below. Failure to heed these guidelines will result in proposals being returned without review.

DATES: Unless otherwise noted, strict deadlines for submission to the FY 2004 process are: Full Proposals must be received at the Office of Global Programs no later than 5 p.m. EDT 60 Business Days after the Announcement appears in the **Federal Register**. Letters of Intent should be received at the Office of Global Programs no later than 5 p.m. EDT 20 Business Days after the Announcement appears in the **Federal Register**.

ADDRESSES: Full Proposals must be submitted to: NOAA Office of Global Programs; 1100 Wayne Avenue, Suite 1210; Silver Spring, MD 20910–5603. It is important to note that Full Proposals may not be submitted via facsimile or e-mail.

General Information Contact: Diane Brown at the above address, or *diane.brown@noaa.gov* 301–427–2089 ext. 107, fax: 301–427–2222.

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Please be advised that actual funding levels will depend upon the final FY 2004 budget appropriations. In FY 2002, approximately $6,000,000 in first year funding was available for approximately 60 new awards.

This Program Announcement is for projects to be conducted by investigators outside the Federal Government, primarily over a one-, two- or three-year period. The NOAA Climate and Global Change Program has been approved for multi-year funding up to a three-year duration. The funding instrument for awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include, but are not limited to, proposals for collaboration between NOAA or NOAA

scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NOAA is not available under this announcement. Matching share is not required by this program.

2. Program Authority

49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2931–2934; (CFDA No. 11.431)—Climate and Atmospheric Research.

3. Program Elements

In FY 2004, NOAA will only accept individual proposals in the Main Program Elements listed below. The names, affiliations and phone numbers of relevant Climate and Global Change Program Managers are provided. Investigators are encouraged to visit the Climate & Global Change Program Web page (*http://www.ogp.noaa.gov/*) for general program information prior to submitting full proposals. Applicants may also communicate with Program Managers for information.

(A) Atmospheric Composition and Climate (ACC)

The Atmospheric Composition and Climate Program pursues two overall research objectives: (1) to improve the predictive understanding of the radiative forcing of the climate system by aerosols and by chemically-active greenhouse gases, such as tropospheric ozone and methane, and (2) to better characterize the recovery of the stratospheric ozone layer, including its role in climate change. The integrated research activities that address these objectives involve instrument development, global observations, laboratory studies, and theoretical modeling by NOAA and extramural partners. A hallmark of the Program is that its objectives are cooperatively framed with both national and international collaborators. Nationally, the Program's aerosol research is part of the interagency National Aerosol Climate Interaction Program (NACIP). Internationally, the Program's research contributes to the projects of the International Global Atmospheric Chemistry (IGAC) program of the International Geosphere-Biosphere Program (IGBP), and the Stratospheric Processes and their role in Climate (SPARC) program of the World Climate Research Program (WCRP).

For FY 2004, proposals are encouraged that support three activities:

(1) *Intercontinental Transport and Chemical Transformation (ITCT)—a part of IGAC.* The interagency-international ITCT–2K4 study is aimed at providing observational data and diagnostic studies needed to evaluate and improve model estimates of the outflow of chemicals from North America across the Atlantic Ocean and to evaluate the impact of these compounds on the radiative balance and chemistry of the atmosphere over the Eastern United States and North Atlantic. Proposals are encouraged that target: (a) Development of measurement techniques related to this study (and other such field studies), (b) carrying out atmospheric measurements needed to determine the sources and processes that govern the distribution of ozone and the distribution and chemical/radiative properties of aerosols over this region, and (c) development, evaluation, and application of theoretical models that can simulate these chemical/radiative effects and their influence on the radiative balance in the earth's atmosphere.

(2) *Regular vertical profiling of aerosols.* NOAA is expanding its effort at carrying out regular measurements of aerosols and their properties at selected sites using small aircraft. Proposals are sought that focus on developing measurement techniques that are applicable to such studies.

(3) *Aerosol indirect effects.* In addition, proposals are encouraged for developing and carrying out new techniques and approaches to understanding the relation between the atmospheric concentration and chemical composition of aerosols and their effect on cloud microphysics and radiative properties.

More information about these activities can be found on the Internet: *http://www.al.noaa.gov/WWWHD/pubdocs/* and the Atmospheric Composition and Climate Home page: *http://www.ogp.noaa.gov/mpe/atmochem.* For further information, investigators may contact one of the NOAA program managers, Kea Duckenfield of the Office of Global Programs (*Kea.Duckenfield@noaa.gov,* 301–427–2089 ext. 112, fax: 301–427–2073) or Fred C. Fehsenfeld of the Aeronomy Laboratory (*fcf@al.noaa.gov,* 303–497–5819).

(B) Climate Observation

The goal of this element is to build and sustain the global climate observing system that is needed to satisfy the long-term observational requirements of the operational forecast centers, international research programs, and major scientific assessments. The element supports in-situ ocean components that contribute to global networks for understanding climate variability and change, the global water cycle, and the global carbon cycle, and looks for efficiencies to be gained by utilizing common platforms/sites/data infrastructure for several objectives in parallel. This program element will not accept applications for new projects in FY 2004. For further information, investigators may contact the NOAA program manager, Michael Johnson (*Mike.Johnson@noaa.gov,* 301–427–2089 ext. 169, fax: 301–427–2073).

(C) Climate and Societal Interactions (CSI)

Research on Vulnerability, Opportunities, and Response Options. Variability, change, and surprise results from a wide variety of climatological, social, economic and ecological circumstances and interactions. The purpose of this program is to increase understanding of the impacts of climate variability and change as conditioned by ongoing processes of decision-making and socio-economic transformation. The suite of efforts is intended to further research-based integration between studies of the whole of the climate system, including human components, such as health, and evolving informational and educational needs of decision-makers in climate sensitive sectors around the world. The goal is to provide the basis for more effective application of climate information, including climate forecasts, for purposes of adaptation. The intent of this program is to encourage overlapping research approaches to integrate knowledge for problem solving. The CSI is a chapeau for a suite of activities. CSI Web site information is available at: *http://www.ogp.noaa.gov/mpe/csi/index.htm.* Prospective applicants must apply to one of the following CSI program elements:

Human Dimensions of Global Change Research (HDGCR)—One of the main goals of the HDGCR program is understanding and analyzing the decision process as it relates to information about a dynamic climate system. The program is interested in building on analyses, modeling, and field work of societal adaptation to climate and the use of scientific information. For further information, investigators may contact one of the NOAA program managers, Nancy Beller-Simms (*Nancy.Beller-Simms@noaa.gov,* 301–427–2089 ext. 180, fax: 301–427–2082) or Caitlin Simpson (*Caitlin.Simpson@noaa.gov,* 301–427–2089 ext. 152, fax: 301–427–2082).

Climate Variability and Health Program (CVHP)—It is anticipated that a joint interagency and private sector announcement of opportunity for research on climate variability and human health will be published in a future **Federal Register** Notice. For more information, investigators may contact the NOAA program manager, Juli Trtanj (*Juli.Trtanj@noaa.gov,* 301–427–2089 ext. 134).

Regional Integrated Sciences and Assessments (RISA)—The Regional Integrated Sciences and Assessments (RISA) program possesses three distinct qualities: (1) Interdisciplinary, integration and synthesis; (2) Bridging the gap between climatic, environmental and societal interactions on different temporal and spatial scales; and (3) Decision support and services. It requires innovative partnerships among a spectrum of interested parties (Federal, State, local and private) to enable regional organizational capacity to develop accurate (*i.e.*, identifying risks, uncertainties, and/or indeterminacies), balanced syntheses and services on an ongoing basis. As such, the program relies heavily on consolidating the results and data from ongoing NOAA–OGP disciplinary program elements, already funded in a region, into an integrated framework. This program will not accept applications to initiate new activities. For further information, investigators may contact the NOAA program manager, Harvey Hill (*Harvey.Hill@noaa.gov,* 301–427–2089 ext. 197, fax: 301–427–2082).

Environment, Science and Development (ESD)—The goal of the ESD program is to enhance our understanding of societal capacity to adapt to climate in the context of integrated environment, science and development issues. The program is designed to stimulate and support solution-oriented, place-based research most relevant to the influence of climate on development objectives and disaster preparedness. ESD seeks to apply this knowledge to improve the institutional, scientific and technical capacity needed to successfully apply climate information to practical challenges associated with sustainable development. Collaborative, multi-disciplinary proposals are encouraged. For more information, investigators may contact one of the NOAA program managers, Lisa Farrow Vaughan (*Lisa.Vaughan@noaa.gov,* 301–427–2089 ext. 132, fax: 301–427–2082) or Candyce Clark (*Candyce.Clark@noaa.gov,* 301–427–2089 ext. 114, fax: 301–427–2082).

(D) Climate Change Data and Detection (CCDD)

The scientific goals of this element include efforts to: (1) Provide data and information management support to assure the availability of critical data sets for a variety of international programs and assessments of primary interest to NOAA's C&GC Program, *e.g.*, WCRP (World Climate Research Program) and IGBP (International Geosphere Biosphere Program), GCOS (the Global Climate Observing System), the IPCC (Intergovernmental Panel on Climate Change), as well as national programs and assessments, *e.g.*, Pan-American Climate Studies (PACS), U.S. CLIVAR (Climate Variability and Predictability) Program, the U.S. National Climate Assessment, the Tri-lateral North American Climate Extremes Assessment, etc.; (2) develop, quality control, and evaluate data sets and quantify time-dependent biases (homogeneity) for cross-cutting science necessary to improve our ability to describe, understand, and predict seasonal, interannual, decadal, and longer-term climate variations and changes; (3) calibrate, validate, and blend existing data sets from a variety of observing systems, including space-based, in-situ, and model-data (data set enrichment); (4) document the quantitative character of observed climate variations and changes (climate change detection); and (5) attribute changes in the observed climate record to specific climate forcings (climate change attribution).

For further information, investigators may contact one of the NOAA program managers, Chris Miller (*Christopher.D.Miller@noaa.gov,* 301–427–2089 ext.143, fax: 301–427–2073) or Bill Murray (*William.L.Murray@noaa.gov,* 301–427–2089 ext. 133, fax: 301–427–2073). Additional information may also be obtained from the DOE contact, Rick Petty (*Rick.Petty.oer.doe.gov,* 301–903–5548); or the NSF contact, David Verardo (*dverardo@nsf.gov,* 703–292–8527).

(E) Climate Dynamics and Experimental Prediction (CDEP)

Climate Dynamics and Experimental Prediction, through a set of Applied Research Centers (ARCs), supports NOAA's program for quantitative assessments and predictions of global climate variability and its regional implications on time scales of seasonal to centennial. The ARCs employ dynamical models in diagnostic and predictive mode as central integrators in a program of research, development and experimental applications intended to improve the National capability to predict the Earth's climate system. In FY 2004, this program will not accept applications for new Centers. For further information, investigators may contact the NOAA program manager, Anjuli Bamzai (*Anjuli.Bamzai@noaa.gov,* 301–427–2089 ext. 113, fax: 301–427–2073).

(F) Climate Variability and Predictability (CLIVAR)

The U.S. CLIVAR program seeks to observe, model and understand patterns of climate variability on seasonal to decadal time scales and to assess the predictability of such climate variability. The ultimate goal of NOAA's participation in CLIVAR is to develop skilful predictions of climate variability and change on seasonal to multi-decadal time scales and regional spatial scales for optimal use in resource planning and policy decision making. The program is designed to understand global climate variability; to determine the spatial and temporal extent to which this variability is predictable; to develop the observational, theoretical, and computational means to predict variability; and to make enhanced predictions, where feasible. NOAA's research focuses on large-scale recurrent patterns of variability that influence climate on the regional scale, particularly over the U.S. Among these patterns are the El Nino-Southern Oscillation (ENSO), Pacific Decadal Oscillation (PDO), Tropical Atlantic Variability (TAV), the North Atlantic Oscillation (NAO), and the American monsoon systems.

NOAA's CLIVAR programs focus on improving seasonal to interannual climate prediction (Pan American Climate Studies program) and assessing global climate variability and change on seasonal to decadal and centennial time scales (CLIVAR Atlantic and CLIVAR Pacific programs). For an information sheet containing further details for research in each of these regions, visit NOAA's CLIVAR Web site at: *http://www.ogp.noaa.gov/mpe/clivar/index.htm.*

For further information on CLIVAR Atlantic, investigators may contact the NOAA program manager, James Todd (*James.Todd@noaa.gov,* 301–427–2089 ext. 139, fax: 301–427–2073). For further information on CLIVAR Pacific, investigators may contact the NOAA program manager, Ming Ji (*Ming.Ji@noaa.gov,* 301–427–2089 ext. 189, fax: 301–427–2073). For further information on Pan American Climate Studies (PACS), investigators may contact the NOAA program manager,

Michael Patterson (*Michael.Patterson@noaa.gov,* 301–427–2089 ext. 102, fax: 301–427–2073).

(G) PACS/GAPP North American Warm Season Precipitation

The goal of this joint PACS/GAPP North American Warm Season Precipitation initiative is to improve understanding and prediction of warm season precipitation over North America through studies of North American monsoon system, with emphasis on seasonal to inter-annual time scales. The initiative's objectives include: (1) Better understanding and more realistic simulation of the evolution of the North American monsoon system and its variations; (2) better understanding and more realistic simulation of the response of the warm season atmospheric circulation and precipitation patterns to slowly varying boundary conditions (*e.g.*, SST, soil moisture); (3) better understanding of the role of the North American monsoon system in the global water cycle and regional climate variability; (4) improved intraseasonal to interannual prediction of the North American monsoon system and regional water resources. More information is available at the PACS and GAPP Web sites: *http://www.ogp.noaa.gov/mpe/clivar/pacs/index.htm* and *http://www.ogp.noaa.gov/mpe/gapp/gapp/index.htm.* For further information, investigators may contact one of the NOAA program managers, Michael Patterson (*michael.patterson@noaa.gov,* 301–427–2089 ext. 102, fax: 301–427–2073) or Jin Huang (*jin.huang@noaa.gov,* 301–427–2089 ext. 148, fax: 301–427–2073).

(H) GEWEX Americas Prediction Project (GAPP)

GAPP is jointly supported by NOAA and NASA. Initiatives are solicited which have a geographical focus on the western USA or the Mississippi River Basin, and address the following GAPP priorities:

1. Land Surface Memory Processes: The anticipated availability of the regional reanalysis in the autumn of 2003 will provide new opportunities to study the effects of land processes over the GAPP study area on seasonal and interannual time scales. Proposals linking the regional reanalysis products to studies of vegetation, soil moisture and snow and their roles in the seasonal predictability of precipitation and streamflow are encouraged. The use of regional reanalysis and satellite data in regional water and energy budget studies is also encouraged. Other land memory process studies and modeling studies in the GAPP region will also be considered, particularly if they contribute to the understanding of the predictability of precipitation or new applications of satellite data in climate research.

2. Orographic Processes: Studies linking the meteorology and hydrology of the Western Cordillera are encouraged. These studies could involve process studies or studies on seasonal time scales with high spatial resolution. Phenomena of significant interest include precipitation, snow pack formation and melt, and runoff generation. The contributions of satellite data to resolving mountain processes will also be considered.

In addition, consideration will be given to studies related to the role of land in seasonal to interannual predictability, the Coordinated Enhanced Observing Period (CEOP) and water resources where demonstrable gaps exist in the current GAPP program.

Details about GAPP are available through the GAPP Science Plan and on the GAPP Web site at: *http://www.ogp.noaa.gov/mpe/gapp/index.htm.* For further information, investigators may contact one of the NOAA program managers, Rick Lawford (*Rick.Lawford@noaa.gov,* 301–427–2089 ext. 146, fax: 301–427–2073), or Jin Huang (*Jin.Huang@noaa.gov,* 301–427–2089 ext.148, fax: 301–427–2073). Information may also be obtained from the NASA program contact, Jared Entin (*jentin@hq.nasa.gov, 202–358–1847*).

(I) Global Carbon Cycle (GCC)

The U.S. Interagency Carbon Cycle Science Program (CCSP) seeks to answer two overarching questions: (1) How large and variable are the dynamic reservoirs and fluxes of carbon within the Earth system, and how might carbon cycling change and be changed in future years, decades and centuries?, and (2) What are our options for managing carbon sources and sinks to achieve an appropriate balance of risk, costs, and benefits to society? For further information on the interagency program, please consult the web at: *http://www.carboncyclescience.gov.*

NOAA's participation in the U.S. program focuses on three main goals: (1) Quantifying spatial patterns and variability of carbon sources and sinks at global to regional scales; (2) Documenting the fate of anthropogenic CO_2 in the atmosphere and oceans; and (3) Improving future climate predictions by incorporating a dynamical understanding of the carbon cycle into models. To achieve these goals, the GCC program focuses on oceanic and atmospheric observations, process-oriented field studies and modeling. Information and current project abstracts can be found on the web at: *http://www.ogp.noaa.gov/mpe/gcc/index/html.*

For further information, investigators may contact the NOAA program manager, Kathy Tedesco (*Kathy.Tedesco@noaa.gov,* 301–427–2089 ext. 119, fax: 301–427–2073).

4. Eligibility

Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Proposals selected for funding will be funded through a project grant or cooperative agreement under the terms of this notice.

5. Letters of Intent (LOI)

The purpose of the LOI process is to provide information to potential applicants on the relevance of their proposed project to the Climate and Global Change Program and the likelihood of it being funded in advance of preparing a full proposal. While it is in the best interest of the applicants and their institutions to submit an LOI, it is not a requirement; applicants who do not submit an LOI are allowed to submit a full proposal. Full proposals will be encouraged only for LOIs deemed relevant.

The LOI should provide a concise description of the proposed work and its relevance to the targeted program element. The LOI should include the components listed below. If these components are not included, the LOI risks a delayed response and may not be considered by the program reviewers. (A) Identification of the program element that is being targeted in the LOI. (B) Specification of a tentative project title in the LOI. (C) Name(s) and institution(s) of all principal investigator(s), and specification of which individual is the Lead principal Investigator. LOIs should be no more than two pages in length and must include a statement of the problem, brief summary of work to be completed, methodology to be used, and approximate cost of the project. LOIs are encouraged to be submitted by facsimile or e-mail to the identified NOAA program element's program manager.

A panel of program managers will review each LOI to determine whether the LOI is responsive to the program goals as advertised in this notice. An LOI response (e-mail or letter) will be sent back to the investigator encouraging or discouraging a full proposal. The final decision to submit a

full proposal will be made by the investigator.

6. Evaluation Criteria

Evaluation criteria for proposals are:

(A) *Scientific/Technical Merit:* Intrinsic scientific value of the subject and the study proposed. (50%)

(B) *Importance/Relevance and Applicability:* Importance and relevance to the goals of the selected Program Element(s). (See Program Elements descriptions above.) (50%)

7. Selection Procedures

Proposals will be evaluated in accordance with the above evaluation criteria by (A) independent peer mail reviewers, and/or (B) independent peer panel reviewers consisting of both Federal and non-Federal experts. Only mail reviewers may be used if only a few applications are received. If peer panel reviewers evaluate all proposals, only their ratings may be used to establish the rank order.

The peer mail reviewers and peer panel reviewers rate each proposal using the above two evaluation criteria. The proposals will be scored from 1, for poor, to 5, for excellent, on Scientific/Technical Merit and from 1, for low, to 5, for high, on Importance/Relevance. The scores from each reviewer for each proposal will be averaged to produce an average numerical score for the proposal. The average scores for all proposals result in a numerical rank order.

Occasionally a reviewer may, due to lack of familiarity in a particular area, choose not to score a particular proposal. The scores from each peer panel reviewer for each proposal will be averaged to produce a single numerical score for the proposal. The average scores for all proposals result in a numerical rank order within each program element.

If peer mail review and peer panel review are both conducted, the available peer mail reviews will be provided to the peer review panel for use in its deliberations prior to providing its ratings.

If only a mail peer review was conducted, the Program Manager will use the rank numerical order of the mail reviews to determine funding recommendations. If only a peer panel review or both a peer panel review and a peer mail review were conducted, the Program Manager will use the numerical rank order of the peer review panel to determine funding recommendations.

Normally, the Program Manager will recommend proposals to the Selecting Official in numerical rank order. Infrequently, the Program Manager may recommend a proposal out of numerical rank order based upon one or more of the following selection factors: (1) Duplication with other projects that are funded or considered for funding by NOAA or other federal agencies, (2) applicant's prior award performance, (3) program priorities and policy factors described with each program element above, (4) balance/distribution of funds across program elements. The Program Manager will also determine the total duration of funding and the amount of funding for each selected proposal, which may be less than proposal and budget requested.

The Program Manager submits his/her recommendations to the Selecting Official who reviews the recommendations. The Selecting Official may reject or accept the recommendation for any proposal selected out of numerical rank order based upon any of the above selection factors, as well as upon the availability of funding. The Selecting Official then presents his/her recommendations to the Grants Management Division.

Unsuccessful applications will be retained for 1 year and then destroyed.

8. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply will result in proposal application being returned.

(A) *Full Proposals:* (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal, however, the normal review process requires 15 copies. For an optimal review, investigators are encouraged to submit sufficient proposal copies, especially color or unusually sized (not 8.5″x11″), or otherwise unusual materials submitted as part of the proposal. Only three original copies of the Federally-required forms are needed. (3) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Appended information may not be used to circumvent the page length limit. Federally-mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(B) *Required Elements:* All proposals must include the following elements: (1) *Signed title page:* The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which program element is being addressed. If more than one investigator is listed on the title page, please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period. (2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. (3) *Results from prior research:* The results of each prior research project (during the last 3 years) relevant to the proposed effort should be summarized in brief paragraphs. This section should not exceed two pages. (4) *Statement of work:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15 page limit should discuss this possibility with the appropriate Program Manager prior to submission. Proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions. (5) *Budget Justification:* A brief description of the expenses listed on the budget and how they address the proposed work. Item justifications must include salaries, equipment, publications, supplies, tuition, travel, etc. (6) *Budget:* The proposal must include total and annual itemized budgets corresponding with the descriptions provided in the statement of work. Non-Federal Applicants must submit a Standard Form 424 (7–97) ''Application for Federal Assistance,'' including a detailed budget using the Standard Form 424a (7–97), ''Budget Information—Non-Construction Programs.'' Travel must be itemized to include destination, airfare, per diem,

lodging and ground travel. The form is included in the standard NOAA application kit. (7) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers. (8) *Current and pending support:* For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months per year, dollar value and duration. Requested values should be listed for pending support.

(C) *Other requirements:* Applicants may obtain a standard NOAA application kit from the OGP Web page: *http://www.ogp.noaa.gov/grants/appkit.htm.*

9. Lower Tier Certifications

(A) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(B) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

10. Classification

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number. This notice has been determined to be not significant for purposes of Executive Order 12866.

Applications proposed for funding are subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs''. This Notice has been determined to be ''not significant'' for purposes of Executive Order 12866. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132. Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.* Pursuant to Executive Orders 13256, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at: *http://www.ed.gov/offices/OCR/99minin.html.*

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Daniel L. Albritton,

Assistant Administrator (Acting), Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–10936 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042803J]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Mackerel Stock Assessment Panel (MSAP).

DATES: This meeting will begin at 1:30 p.m. on Monday, May 19, 2003 and will conclude by 3 p.m. on Thursday, May 22, 2003.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The MSAP will convene to review stock assessment updates for Gulf group king and Spanish mackerel, as well as Atlantic group king and Spanish mackerel. The MSAP will consider available information including, but not limited to, commercial and recreational catches, natural and fishing mortality estimates, recruitment, fishery-dependent and fishery-independent data, bycatch and bycatch mortality, and data needs. These analyses will be used to determine the condition of the stocks and possibly the levels of acceptable biological catch (ABC) based on presently available information.

Although non-emergency issues not contained in the agenda may come before the MSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal MSAP action during this meeting. MSAP action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

A copy of the MSAP agenda can be obtained by calling (813) 228–2815.

Special Accommodations

This meeting is 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 May 9, 2003.

Dated: April 29, 2003.

Matteo J. Milazzo,

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

[FR Doc. 03–11059 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042803I]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Herring Oversight Committee and Advisory Panel along with the Atlantic States Marine Fisheries Commission (ASMFC) Section Panel in May, 2003. Recommendations from these committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, May 21, 2003 at 7 p.m.

ADDRESSES: The meeting will be held at the King's Grant Hotel, Trask Lane, Route 128, Danvers, MA 01923;telephone: (978) 774–6800.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review the May 1, 2003 Herring Plan Development Team (PDT) Report. They will also consider a ''rollover'' of the Atlantic herring specifications from 2003 through 2004 and until the implementation of Amendment 2 to the Herring Fishery Management Plan (FMP). In consultation with the ASMFC Herring Section, the group will develop Committee recommendations for Council consideration regarding specifications for the 2004 fishing year (January 1 December 31, 2004). Also on the agenda will be an ASMFC Herring Section discussion of herring Internal Waters Processing (IWP) applications for 2004 and other matters pertaining to the ASMFC Herring Management Plan.

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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 29, 2003.

Matteo J. Milazzo,

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

[FR Doc. 03–11058 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042803H]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) are scheduled to meet.

DATES: The meeting will be held on May 27, 2003.

ADDRESSES: The meeting will be held at NMFS Alaska Fishery Science Center, 7600 Sand Point Way NE, Building 4, Room 2076 (Jim Traynor Seminar Room) Seattle, WA 99115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council Staff: 907–271–2809

SUPPLEMENTARY INFORMATION: On Tuesday the 27th of May, the committee will meet at 9 a.m. The committee will discuss and make recommendations on the following items: the PNCIAC request to adjust the 2003 Opilio Guideline Harvest Level; a definition of what PNCIAC's ''consultative role'' actually means; Opilio Spawning Biomass estimates; evaluation of harvest strategies for Bristol Bay Red King Crabs; the development of biological reference points; and other new business.

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 identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: April 29, 2003.

Matteo J. Milazzo,

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

[FR Doc. 03–11057 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042803K]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold work sessions, which are open to the public.

DATES: The CPSMT will meet Wednesday, May 21, 2003 from 8 a.m. to 12 noon. The CPSAS will meet Wednesday, May 21, 2003 from 1 p.m. until business for the day is completed.

ADDRESSES: The meetings will be held at NMFS Southwest Region, Large Conference Room, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802; telephone: (562) 980–4000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of these work sessions is to review the current Pacific mackerel stock assessment and develop harvest guideline and seasonal structure recommendations for the 2003–04 fishery. The 2003 CPS stock assessment and fishery evaluation (SAFE) document might also be discussed.

Although nonemergency issues not contained in the CPSMT and CPSAS meeting agenda may come before the CPSMT and CPSAS 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 document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's or CPSAS's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 29, 2003.

Matteo J. Milazzo,

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

[FR Doc. 03–11060 Filed 5–2–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Collection of Information; Proposed Extension of Approval; Comment Request—Follow-Up Activities for Product-Related Injuries

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 persons who have been involved in or have witnessed incidents associated with consumer products. 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.

DATES: The Office of the Secretary must receive comments not later than July 7, 2003.

ADDRESSES: Written comments should be captioned ''Product-Related Injuries'' 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 any of the interview guides or forms used for this collection of information, contact Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671; e-mail *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act, 15 U.S.C. 2054(a), requires the Commission to collect information related to the causes and prevention of death, injury, and illness associated with consumer products. That legislation also requires the Commission to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products. The Commission uses this information to support development and improvement of voluntary standards, rulemaking proceedings, information and education campaigns, and administrative and judicial proceedings. These safety efforts are vitally important to help make consumer products safer and to remove unsafe products from the channels of distribution and from consumers' homes.

Persons who have sustained injuries or who have witnessed safety-related incidents associated with consumer products are an important source of safety information. From consumer complaints, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission investigates a limited number of incidents. These investigations may involve face-to-face or telephone interviews with accident victims or witnesses. The Commission also receives information about product-related injuries from persons who provide written information by using forms displayed on the Commission's internet web site or printed in the *Consumer Product Safety Review* and other Commission publications.

The Office of Management and Budget (OMB) approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on July 31, 2003. The Commission now proposes to request an extension of approval, with changes, of this collection of information. As explained below, the changes consist of a net addition of 1,772 burden hours.

B. Estimated Burden

The Commission staff obtains information about incidents involving consumer products from approximately 14,100 persons annually. The staff conducts face-to-face interviews at incident sites with approximately 500 persons each year (up from 400 persons in 2000). On average, an on-site interview takes approximately 5 hours. The staff will also conduct approximately 3,200 in-depth investigations by telephone. Each in-depth telephone investigation requires approximately 20 minutes. Additionally, the Commission's hotline staff interviews approximately 5,200 persons each year about incidents involving selected consumer products (up from 2000's estimate of 4,000). These interviews take an average of 10 minutes each. Each year, the Commission also receives information from about 5,200 persons (up from 2000's estimated 2,500) who complete forms requesting information about product-related incidents or injuries. These forms appear on the Commission's internet web site and are printed in the *Consumer Product Safety Review* and other Commission publications. The staff estimates that completion of the form takes about 12 minutes.

The Commission staff estimates that this collection of information imposes a total annual burden of 5,472 hours on all respondents: 2,500 hours for face-to-face interviews; 1,066 hours for in-depth telephone interviews; 1,040 hours for completion of written forms; and 866 hours for responses to Hotline telephone questionnaires.

The Commission staff estimates the value of the time of respondents to this collection of information at $23.44 an hour. This is based on the September 2002 Bureau of Labor Statistics, Department of Labor cost for employee compensation, private industry, state and local government. At this valuation,

the estimated annual cost to the public of this information collection will be about $128,263.

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: April 25, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–10993 Filed 5–2–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Chemical and Biological Defense Program (CBDP) Draft Programmatic Environmental Impact Statement (DPEIS)

AGENCY: U.S. Army Medical Research and Materiel Command (USAMRMC), Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Army has prepared a DPEIS covering the execution of an integrated CBDP designed to protect our soldiers, sailors, marines, and airmen from the evolving chemical and biological (CB) threats they may encounter on the battlefield. The DPEIS evaluates the potential environmental impacts associated with the execution of the DoD CBDP. The National Defense Authorization Act for Fiscal Year 1994 mandated the coordination and integration of all DoD CB defense programs. The Army is the executive agency for the CBDP.

DATES: The public comment period for the DPEIS will end 45 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or requests for copies of the DPEIS may be made to Ms. JoLane Souris, Environmental Coordinator, U.S. Army Medical Research and Materiel Command, Attn: MCMR–ZC–S, 504 Scott Street, Fort Detrick, MD 21702–5012 or visit the CBDP DPEIS Web site at *http://chembioeis.detrick.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. JoLane Souris by calling (301) 619–2004 or by fax at (301) 619–6627.

SUPPLEMENTARY INFORMATION: The mission of the DoD CBDP is to provide CB defense capabilities to allow the military forces of the United States to survive and successfully complete their operational missions in battle space environments contaminated with CB warfare agents. If our military forces are not fully and adequately prepared to meet this threat, the consequences could be devastating. The CBDP to support this mission comprises research, development, and acquisition activities. Some of these CBDP activities necessarily involve the use of hazardous chemicals or infectious disease agents for research, development, and production purposes. The controls on and the potential environmental consequences of such use for both the proposed action and the alternative were primary focuses of the CBDP DPEIS.

The activities take place at numerous military installations and contractor facilities throughout the United States. Details concerning the CBDP are contained in the CBDP Annual Report to Congress, April 2002 at *http://www.acq.osd.mil/cp/reports.html.* The proposed action consists of the execution of an integrated CBDP designed to protect our soldiers, sailors, marines, and airmen from the evolving CB threats they may encounter on the battlefield. The no action alternative, continuation of current CBDP operations as described in and covered by existing environmental analyses, also was evaluated. No other alternatives were identified during the public scoping process.

Although numerous environmental documents dating back to the Biological Defense Research Program Final PEIS (April 1989) have been prepared analyzing the potential environment consequences of various elements of he CBDP, no one document analyzes the potential environmental impacts of the full range of CBDP activities. In keeping with the purposes of NEPA, DoD has now prepared such a document in the form of the CBDP DPEIS. This document creates an overarching framework that will continue to ensure fully informed Government decision making within the CBDP and will provide a single, up-to-date information resource for the public.

Comments, including names and addresses of respondents, will be available for public review during regular business hours at the address shown in the **ADDRESSES** section of this Notice. Individual respondents may request confidentiality. If you wish to withhold your name and address from public review or disclosure, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. Anonymous comments, however, will not be considered. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Dated: April 28, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 03–10973 Filed 5–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

South Fork Flathead Watershed/ Westslope Cutthroat Trout Conservation Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare an EIS on removal of all fish from selected lakes in the South Fork of the Flathead River drainage that harbor non-native species that threaten to genetically contaminate native fish in streams leading from those lakes, down into the South Fork Flathead River and Hungry Horse Reservoir. The specific lakes proposed for treatment are located in the Montana Counties of Flathead, Missoula, and Powell. This proposed action would take place within floodplains and waters located directly adjacent to and below the high water marks of these lakes.

DATES: Written comments are due to the address below no later than June 19,

2003. Comments may also be made at an EIS scoping meeting open house to be held on May 22, 2003, at the time and address below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS that is being developed, and requests to be placed on the project mailing list, to Communications, Bonneville Power Administration—DM–7, P.O. Box 12999, Portland, Oregon, 97212. Comments may also be sent to the BPA Internet address at *comment@bpa.gov.*

On May 22, 2003, a scoping meeting open house will be held from 4 p.m. to 8 p.m. at the Regional Headquarters of Montana Fish, Wildlife & Parks, 490 N. Meridian Road, Kalispell, Montana.

Information about the project can also be obtained from a BPA website at: *http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/MountainLakesTrout.*

FOR FURTHER INFORMATION, CONTACT: Colleen Spiering, Environmental Project Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; direct telephone number 503–230–5756; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; e-mail address: *caspiering@bpa.gov.*

SUPPLEMENTARY INFORMATION:

Lead and Cooperating Agencies: BPA shall be the lead agency in preparing and issuing an EIS for this project. The United States Forest Service (USFS), Flathead National Forest, Department of Agriculture; and Montana Fish Wildlife & Parks (MFWP) will participate as cooperating agencies.

Responsible Officials:

- Stephen J. Wright, Administrator and Chief Executive Officer, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621.
- Cathy Barbouletos, Forest Supervisor, Flathead National Forest, 1935 3rd Ave. East, Kalispell, Montana, 59901.
- Dan Vincent, Regional Supervisor, Montana Fish, Wildlife & Parks, 490 North Meridian Road, Kalispell, Montana, 59901.

Nature of Decisions To Be Made: BPA will be deciding whether to fund the project. USFS will determine if the use of fish toxins and motorized equipment will be permitted in the Bob Marshall Wilderness, the Jewel Basin Hiking Area, and the Flathead National Forest. The rationales for the decisions will be documented in two separate Records of Decision. The USFS decision will be subject to appeal under applicable USFS regulations.

Background: The South Fork Flathead River, above Hungry Horse Dam, contains one of the largest natural populations of native westslope cutthroat trout in the nation. Hungry Horse Dam protects the entire South Fork drainage from exotic fish invasion from fish downstream of the dam. Further protection is afforded in that the entire watershed is on National Forest land, wilderness, and proposed wilderness. However, numerous lakes that drain into the South Fork contain non-native rainbow and Yellowstone cutthroat trout that have interbred with westslope cutthroat trout creating hybrid populations. Presently these populations are providing sources of hybrid trout that threaten genetically pure native cutthroat trout populations downstream of the lakes and in the South Fork Flathead River.

Purpose and Need for Action: Development of the hydropower system in the Columbia River Basin has had far-reaching effects on many species of fish and wildlife. BPA is responsible for protecting, mitigating, and enhancing fish and wildlife affected by the development, operation, and management of Federal hydroelectric facilities on the Columbia River and its tributaries. (See Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839b(h)(10)(A).) BPA meets this responsibility, in part, by funding projects identified through a regional process led by the Northwest Power Planning Council. The South Fork Flathead Watershed/Westslope Cutthroat Trout Conservation Program, a portion of the Hungry Horse Dam Mitigation Program, was proposed by MFWP for BPA funding. The project is a cooperative effort with MFWP and USFS, Flathead National Forest.

Of the 355 lakes in the South Fork drainage above Hungry Horse Dam, 50 have fish. Twenty-nine of these have genetically pure populations of native westslope cutthroat trout and approximately 21 have hybrid populations (confirmed through the University of Montana's Wild Trout and Salmon Genetics Laboratory)—see Sage, Huston, Leary, Rumsey and Cavigli cited below). The lakes with hybrid populations are being targeted in this project.

Genetic contamination by exotic trout occurred in the past when anglers or fish managers planted the lakes with non-native rainbow and Yellowstone cutthroat trout to provide or enhance recreational angling opportunities. Some of the lakes have no record of stocking of these species, but the exotic trout are present in the lakes. Genetic surveys have shown that exotic populations in headwater lakes are out-migrating. This threatens to compromise the genetic integrity of pure stocks downstream (Huston 1988, Huston 1989, Huston 1990, Sage 1993, Leary 2002, Rumsey and Cavigli 2002). Extensive examination of westslope cutthroat trout in the South Fork Flathead River presently confirms their genetic purity; however, their continued genetic purity is at great risk due to hybridization from upstream lakes.

Since 1986, most of the lakes have been stocked with genetically pure westslope cutthroat trout from Montana State's M012 brood stock in an attempt to shift the populations toward a genetically pure state through progressive inbreeding. The M012 stock was derived from wild westslope cutthroat trout from 12 populations in the South Fork Flathead River drainage and two from the Clark Fork River drainage. Once the wild fish were acclimated to the hatchery, they were genetically tested to assure purity.

The underlying need for action is to protect the genetically pure populations of native westslope cutthroat trout currently existing in the Flathead River Watershed from hybridization with rainbow trout and Yellowstone cutthroat trout.

Proposed Action: The Proposed Action is to remove all fish from selected lakes in the South Fork of the Flathead River Watershed in the Flathead National Forest, the Bob Marshall Wilderness, and the Jewel Basin Hiking Area. These selected lakes harbor non-native species that threaten to enter and genetically contaminate streams leading from those lakes, down into the Flathead River and Hungry Horse Reservoir. There are approximately 21 lakes targeted for treatment. Two or three lakes would be treated each year for about a 10-year period. The proposed method of fish removal is to utilize registered compounds that are toxic to fish.

Floodplains and Wetlands: In accordance with DOE regulations for compliance with floodplains and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

Process to Date: BPA sent a letter to the public dated November 16, 2001,

announcing that an Environmental Assessment (EA) would be developed for this project. In preparing the EA, BPA and USFS identified issues that may be significant in the context of NEPA and, therefore, the agencies decided that an EIS should be prepared.

Alternatives Proposed for Consideration: (1) The application of fish-killing toxins, either with Rotenone or Antimycin, by aircraft and motorboat, with transportation to the lakes by aircraft, livestock, or vehicle. (2) Alternative methods for removing fish include angling, genetic ''swamping,'' introducing predatory fish, construction of fish passage barriers, gill netting, seining, trap netting, electrofishing, explosives, and lake dewatering. (3) Not removing the fish (or the No-Action Alternative) is also proposed for consideration.

Identification of Environmental Issues: The potential environmental issues identified for most fish and wildlife projects include land use, cultural resources, sensitive plants and animals, erosion/soils, wetlands, floodplains, and fish and water resources. The significant environmental issues for this project may include the use of helicopters and motorized equipment in the wilderness, and potential impacts to amphibians and other non-targeted species from the use of fish toxins.

Public Participation: The scoping process will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. This notice of intent is a major component of the scoping process and guides the development of the EIS. BPA has established a 45-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Public and internal scoping on this project will also include, in addition to the information gathered during BPA's related EA process, one public open house meeting; one mailing to Federal, State and local agencies, organizations, and individuals; personal conversations between interdisciplinary team members and the public; and news media releases.

When completed, the Draft EIS will be circulated for review and comment for 45 days, and a meeting will be held with the public to discuss the Draft EIS. BPA and the cooperating agencies will consider and respond in the Final EIS to comments received on the Draft EIS.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on April 25, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–11010 Filed 5–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–70–000]

Almagre Power Holdings, LLC, Mesquite Colorado HoldCo, L.L.C., Mesquite Investors, L.L.C.; Notice of Filing

April 28, 2003.

Take notice that on April 23, 2003, Mesquite Colorado HoldCo, L.L.C. (Mesquite Colorado) and Mesquite Investors, L.L.C. (Mesquite Investors) filed with the Federal Energy Regulatory Commission a Notice of Withdrawal of the application filed in the above-referenced docket on March 21, 2003, to effectuate a transfer of all of Mesquite Colorado's membership interests in Front Range Power Company, L.L.C. to Almagre Power Holdings, LLC, a direct wholly owned subsidiary of ArcLight Energy Partners Fund I, L.P. Mesquite Colorado and Mesquite Investors state that the application is being withdrawn because the underlying transaction has been terminated.

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, 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.

Comment Date: May 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10963 Filed 5–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–53–000 and GP98–29–000]

Kinder Morgan Interstate Gas Transmission, LLC ONEOK Resources Co.; Notice of Settlement Conference

Issued April 28, 2003.

A settlement conference will be held on Tuesday, May 13, 2003, to address the outstanding ad valorem tax issues in the above dockets. The conference will begin at 10 a.m. and will be held in the offices of Kinder Morgan, 370 Van Gordon Street, Lakewood, Colorado, 80228.

Steven A. Rothman, a mediator with the Commission's Dispute Resolution Service, will mediate the conference. He will be available to communicate in private with any party prior to the conference. If a party has any questions regarding the conference, please call Mr. Rothman at (202) 502–8643 or send an e-mail to *Steven.Rothman@ferc.gov*. Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service at 1 877 FERC ADR (337–2237) or (202) 208–8702. Mr. Miles is also available at *Richard.Miles@ferc.gov*. If you plan on attending the conference, please contact Bud J. Becker at Kinder Morgan at (303) 763–3496. Kinder Morgan also will arrange for telephone conferencing.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10966 Filed 5–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–766–000, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

April 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. ER03–766–000]

Take notice that on April 23, 2003, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff and its Market Administration and Control Area Services Tariff pertaining to the mechanism by which the NYISO pricing rules will reflect actions taken by the NYISO when the NYISO experiences a persistent shortage of 10-minute reserves and when the NYISO calls on Special Case Resources or its Emergency Demand Reduction Program.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff and upon the New York State Public Service Commission.

Comment Date: May 14, 2003.

2. DeSoto County Generating Company, LLC

[Docket No. ER03–767–000]

Take notice that on April 23, 2003, DeSoto County Generating Company, LLC (DeSoto) tendered for filing a request for waiver of certain Commission regulations, including 18 CFR parts 41, 101, and 141, for the term of the Tolling Agreements between DeSoto and Florida Power & Light Company.

DeSoto states that copies of this filing were served to Florida Power & Light Company.

Comment Date: May 14, 2003.

3. Susquehanna Energy Products, LLLP

[Docket No. ER03–768–000]

Take notice that on April 23, 2003, Susquehanna Energy Products, LLLP (Susquehanna Energy) petitioned the Commission for acceptance of Susquehanna Energy FERC Electric Tariff, Original Volume Number 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: May 14, 2003.

4. American PowerNet Management, LP

[Docket No. ER03–769–000]

Take notice that on April 23, 2003, American PowerNet Management, LP (APN) petitioned the Commission for acceptance of APN Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

APN states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. APN indicates that it is not in the business of generating or transmitting electric power. APN states that it is a limited partnership engaged primarily in the business of providing energy management services to commercial, industrial, and government entities.

Comment Date: May 14, 2003.

5. AIG Energy Inc.

[Docket No. ER03–770–000]

Take notice that on April 23, 2003, AIG Energy Inc. (AIGEI), filed a notice of succession reflecting the change in the name of the company from AIG Energy Trading Inc., to AIG Energy Inc. In addition, AIGEI filed a Notice of Change in Status from that provided in its initial rate schedule filed March 27, 2001.

Comment Date: May 14, 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, 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. 03–10964 Filed 5–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6032–051]

Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville); Notice of Settlement and Soliciting Comments

April 28, 2003.

Take notice that the following offer of settlement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Offer of Settlement and Request to Rescind Acceptance of License Surrender.

b. *Project No.:* 6032–051.

c. *Date filed:* April 23, 2003.

d. *Applicant:* Niagara Mohawk Power Corporation and Fourth Branch Associates.

e. *Name of Project:* Mechanicville Project.

f. *Location:* On the Hudson River, in Saratoga and Rensselaer Counties, New York. There are no known federal lands, including Indian reservations, occupied by project works or located within the project boundary.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contacts:* Frances E. Francis, Spiegel & McDiarmid, 1333 New Hampshire Avenue, NW., Washington, DC 20036, (202) 879–4000. Stephen C. Palmer, Swidler, Berlin, Shereff, Friedman LLP, 3000 K Street NW., Suite 300, Washington, DC 20007–5116, (202) 424–7500.

i. *FERC Contact:* Heather Campbell, (202) 502–6182, *heather.campbell@ferc.gov*.

j. *Deadline for filing comments:* May 8, 2003. Reply comments due: May 19, 2003.

All comments (original and eight copies) should be filed with: Magalie R.

Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all persons filing documents with the Commission to serve a copy of those documents on each person on the official service list for the project, which is maintained by the Secretary.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Niagara Mohawk Power Corporation and Fourth Branch Associates (co-licensees) state that they filed the Offer of Settlement for the purpose of resolving between the co-licensees all issues associated with the Mechanicville Project. The co-licensees request that the Commission approve and implement the Settlement Agreement; rescind its acceptance of the surrender of the license for the Mechanicville Project; and, upon effectiveness of a license transfer, terminate the surrender proceeding. The Settlement Agreement transfers all of Niagara Mohawk Power Corporation's interests in the Project to Fourth Branch Associates and, in turn, Fourth Branch Associates will discontinue all proceedings against Niagara Mohawk Power Corporation.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10965 Filed 5–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Extension of Electric Power Resource Commitments by Application of the Energy Planning and Management Program Power Marketing Initiative

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of decision.

SUMMARY: Western Area Power Administration (Western) will apply the Energy Planning and Management Program (EPAMP) Power Marketing Initiative (PMI) to the Parker-Davis Project (P–DP), as proposed in a **Federal Register** Notice (FRN) published on August 8, 2002. Western will market additional capacity that will be available October 1, 2008, creating a larger resource pool and making additional capacity and energy available to new contractors. The additional capacity will also allow Western to extend a larger percentage of existing contractors' current Firm Electric Service (FES) allocations.

DATES: Western's decision to apply the PMI to the P–DP will become effective on June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Tinsley, Project Manager, Western Area Power Administration, PO Box 6457, Phoenix, AZ, 85005–6457, telephone (602) 352–2525, email *post2008pdp@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Authorities: Western markets P–DP power resources under the Department of Energy (DOE) Organization Act (42 U.S.C. 7101–7352); and the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by later acts, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that apply specifically to P–DP.

Background: Western published its proposal to apply the EPAMP PMI to the P–DP on August 8, 2002 (67 FR 51580). We proposed to extend 94 percent of the current P–DP FES allocations for 20 years. The remaining 6 percent of resources would form a resource pool for allocation to new contractors.

In the August 8, 2002, notice, Western requested comments on the proposal and gave interested parties until November 6, 2002, to submit written comments. Public information and comment forums were held in Las Vegas, Nevada; Phoenix, Arizona; and Ontario, California. Western received comments from firm power contractors, Native American tribes, and other potential contractors. Comments may be viewed on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt.* Western also addresses specific comments later in this notice.

Decision: Based on comments received and a review of available resources, Western will: (1) Apply the PMI to the Parker-Davis Project remarketing effort; (2) Increase the summer and winter marketable capacity to 258.985 megawatts (MW) and 198.240 MW respectively; (3) Increase the capacity available to existing P–DP contractors as of October 1, 2008; (4) Round up allocations of less than 1 MW to an even 1 MW in summer and winter, and allocations of less than 2 MW to an even 2 MW in summer only; (5) Extend for 20 years 93 percent of existing contractors' adjusted allocations; and, (6) Use the remaining 7 percent of adjusted allocations for the resource pool.

Western computed existing contractors' extension allocation amounts using the formula contained in the EPAMP PMI (10 CFR part 905.33):

Customer Contract Rate of Delivery (CROD) today/total project CROD under contract today × project-specific percentage × marketable resource determined to be available at the time future resource extensions begin = CROD extended.

After adjusting each contractors' CROD by applying the increase in marketable capacity and then reducing the adjusted allocations by 7 percent, the net effect to each contractor's current allocation is a reduction of less than 1 percent. (See Table 1 for a list of each contractor's extended allocation.) The 7 percent reduction to the adjusted allocations will create a resource pool with 16.779 MW of summer capacity and 12.903 MW of winter capacity. Western rounded these capacities to 17 MW in summer and 13 MW in winter. The new resource pool includes 0.869 MW of summer withdrawable capacity and 0.619 MW of winter withdrawable capacity. The associated energy will equal 3,441 kWh/kW in summer and 1,703 kWh/kW in winter, based on the current marketing plan criteria. Western will request applications for resource pool allocations under a separate process.

Table 1
Revised Contract Values
Capacity Allocation (kW)

Allottee	Summer			Winter		
	Withdrawable FES Allocation (kW)	Non-withdrawable FES Allocation (kW)	Total FES Allocation (kW)	Withdrawable FES Allocation (kW)	Non-withdrawable FES Allocation (kW)	Total FES Allocation (kW)
AEPCO	0	23,637	23,637	0	18,284	18,284
CRC	3,560	53,000	56,560	2,097	38,655	40,752
CRIT	0	8,839	8,839	0	5,903	5,903
ED3 (1)	2,143	3,021	5,164	1,438	2,765	4,203
Edwards AFB	842	17,318	18,160	498	14,040	14,538
FMIT	0	2,000	2,000	0	1,192	1,192
Fredonia	486	1,514	2,000	250	1,084	1,334
IID	0	32,327	32,327	0	26,135	26,135
Luke AFB (2)	808	1,795	2,603	489	2,124	2,613
March AFB (3)	1,410	3,129	4,539	766	3,321	4,087
Mesa	0	10,379	10,379	0	7,950	7,950
Needles (4)	0	5,065	5,065	0	4,038	4,038
Nellis AFB	890	1,977	2,867	489	2,124	2,613
Nevada Test Site	692	1,537	2,229	405	1,759	2,164
SCIP	849	16,218	17,067	507	12,540	13,047
SRP	0	31,483	31,483	0	22,358	22,358
Thatcher	0	1,000	1,000	0	1,000	1,000
Tohono O'odham Utility Authority (5)	890	1,977	2,867	438	1,900	2,338
Wickenburg	566	1,434	2,000	284	1,236	1,520
WMI&DD	429	2,650	3,079	282	2,148	2,430
Yuma Irrigation District	0	1,000	1,000	0	1,000	1,000
Yuma MCAS	665	1,477	2,142	334	1,450	1,784
Yuma Proving Ground	931	4,268	5,199	564	3,490	4,054
Totals	**15,161**	**227,045**	**242,206**	**8,841**	**176,496**	**185,337**

(1) Contractual allocation of ED1 assigned to ED-3, effective July, 1989

(2) Gila Bend Aux allocation assigned to Luke AFB, effective October 1, 1992

(3) George AFB and Norton AFB allocations assigned to March AFB effective October 1, 1992

(4) Western's seasonal energy obligations to the City of Needles will reflect the same ratio of energy to capacity specified in the Conformed Criteria (49 FR 50587, December 28, 1984)

(5) Name changed from Papago Tribal Utility Authority to Tohono O'odham Utility Authority on August 1, 1991

Comments and Discussion

This section summarizes and discusses the comments received during the public process on the applicability of the PMI to P–DP. All written comments and transcripts from the public comment forums are available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt.*

Application of the Power Marketing Initiative

Background: Consistent with other recent Western marketing efforts, Western proposes to apply the PMI to the P–DP.

Comments and discussion: Most commenters supported applying the PMI to P–DP, citing the strong precedent in other regions and noting that "it has worked well for Western, for the Federal government, and for customers." Western believes the P–DP has no unique characteristics to exempt it from the PMI, which we have applied in

every remarketing effort since its adoption in 1995. One commenter said that it is not a question of whether, but how, the PMI applies to P–DP, adding that ''not to treat Parker-Davis under these rules would be arbitrary and capricious and abusive discretion.''

Several commenters opposed applying the PMI, instead favoring a complete reallocation of P–DP resources. Some supported extending small contractors' allocations at current levels while reallocating the remaining amount. However, extending some contracts and conducting a complete reallocation are mutually exclusive actions. Under a complete reallocation, no existing contractor would be guaranteed an allocation. The process would also slow the P–DP remarketing effort significantly, creating uncertainty for both existing and potential contractors. This would hamper contractors' ability to make long-term plans, which conflicts with several comments asking Western for a quick decision. Western does not believe that a total reallocation is necessary or desirable.

Some commenters stated that P–DP has been the ''private preserve of some entities for over 40 years.'' Western believes application of the PMI balances the needs of the existing contractors with those of prospective contractors. While current contractors will continue to receive P–DP power under the PMI, the 17–MW summer resource pool, which is a 17–percent increase over the proposed 14.55–MW resource pool, will allow Western to provide the benefits of Federal hydropower beyond existing contractors. As this solution balances the needs of new and existing contractors and encourages widespread use of the resource, Western will apply the PMI to the P–DP remarketing effort.

Contract Term

Background: The PMI provides for extending a major portion of the marketable resource determined to be available at the time resource extensions begin in the future.

Comments and discussion: Western received a substantial number of comments which supported the PMI contract term adopted in the EPAMP final rule (10 CFR 905.31). No objecting comments were received.

Pool Size

Background: Western proposed to extend 94 percent of P–DP contractors' allocations to FES from P–DP. The remaining 6 percent of current allocations would form a resource pool of 14.55 MW of summer capacity and 11.13 MW of winter capacity.

Comments and discussion: Many comments supported a 6-percent reduction of each contractor's allocation to create a resource pool. Others asked Western to consider a smaller percentage, stating that the proposed reduction would disproportionately affect small customers, while some asked us to find additional resources to increase the pool size. Western reviewed the P–DP resources and identified additional capacity to market as FES. The additional capacity results in part from the recent generator rewinds at Davis Powerplant.

Therefore, existing contractors' FES allocations will be increased to reflect the additional capacity, and Western will then extend 93 percent of these allocations, beginning October 1, 2008. The remaining 7 percent will form the resource pool of 17 MW of P–DP power in summer and 13 MW in winter. Applying the increase in marketable capacity with a 7-percent reduction has the net effect of reducing contractors' unadjusted current CRODs by less than 1 percent. This action provides a larger pool for new customers while taking less from current contractors' allocations, benefiting both groups.

One commenter suggested that Western purchase power to increase the pool size. The core of this comment is a request to expand the resource pool, which Western did by marketing additional P–DP capacity. However, the comments accompanying the EPAMP regulations (60 FR 54151, 54162, October 20, 1995) state,

> Western will not purchase resources for new but not yet identified customers, as the appropriate level of Western's marketable resources should be determined through a project-specific analysis of hydrology, project use load, losses, and reserves.

The resource pool expansion is consistent with this statement. Purchase power is a component of the existing marketing plan, as required to meet firm electric service contractual commitments. Western will not supplement the pool by purchasing additional capacity.

Another commenter said that Western had no analytical support for the pool size. The PMI states that Western must make a fair share of the resource available. In the comments accompanying the EPAMP regulations (60 FR 54151, 54162, October 20, 1995), Western stated,

> * * * it is difficult to define precisely the demands of new customers prior to creation of the resource pool. That can only be done after a call for applications is published in the **Federal Register**, and applications are actually received. Western cannot precisely define the needs of new customers at this time.

However, the increased capacity has created a larger resource pool for potential new contractors, allowing Western to allocate P–DP power to more customers.

Existing Marketing Plan Minimum Allocation

Background: Two P–DP contractors receive allocations of less than 1 MW. However, the current marketing plan criteria contains a 1–MW minimum for new customer allocations (52 FR 28333, 28335, July 29, 1987).

Comments and discussion: A commenter asked Western to round up allocations of less than 1 MW, making it consistent with the marketing plan criteria. The 1–MW minimum recognizes that operationally Western does not schedule power to entities in quantities of less than 1 megawatt. Western will round up allocations of less than 1 MW in both summer and winter, based on the 1–MW minimum allocation provision in the existing marketing plan.

Rounding Up To Mitigate Scheduling Risk

Background: Utilities must schedule energy in full megawatt increments. As a result, Western contractors at times must round up their Western allocations when scheduling. Western is at risk of exceeding the P–DP CROD in any one hour because each contractor has the discretion to decide when to round up when scheduling its P–DP power. This risk is highest in summer, when demand is greatest. Western has exceeded the P–DP CROD in the past, which exposes Western to the potential of purchasing capacity. Rounding up customers with allocations of less than 2 MW in summer reduces Western's risk of exceeding the P–DP CROD in any one hour.

Comments and discussion: We will round up contracts with allocations of less than 2 MW to an even 2 MW in summer. This action will reduce Western's risk of exceeding the P–DP CROD and exposure to purchasing capacity.

Exemption for Small Contractors

Background: Western's August 8, 2002, **Federal Register** notice (67 FR 51580–51581) did not propose to exempt small contractors from allocation reductions to form the P–DP resource pool.

Comments and discussion: Several commenters expressed concern about the impact of a 6-percent allocation reduction on small contractors, saying it

would significantly affect power costs while adding very little to the resource pool. These commenters suggested exempting small customers from an allocation reduction.

Western considered special provisions for small contractors during the PMI's development in the early 1990s. The initial PMI proposal (56 FR 16093, April 19, 1991) called for exempting contractors with allocations under 1 MW. However, Western ultimately rejected the idea based on fairness and equity. Such an exemption is also inconsistent with other contract provisions, which do not exempt small contractors from resource withdrawals for project use power or due to changes in operations and hydrology. Small customers will, however, benefit from a much smaller reduction of their P–DP resources due to the increase in marketed project capacity. While allocations of less than 2 MW will be rounded up, Western is taking that action to mitigate its exposure to purchase capacity when the sum of contractors' bulk schedules exceeds the total project CROD, particularly during summer peak usage months.

Withdrawable and Nonwithdrawable Power

Background: P–DP allocations consist of two types of firm power: withdrawable and nonwithdrawable. Power designated ''withdrawable'' may be taken from contractors should the Bureau of Reclamation, U.S. Department of the Interior, determine a need for additional project use power. The Consolidated Marketing Criteria (49 FR 50582, 50586, December 28, 1984) states,

> Power that is reserved for United States priority use, but not presently needed, is marketed to some of the Parker-Davis Project contractors as withdrawable power.

Reclamation may request priority use withdrawals upon 2 years' notice. Western will then substantiate the request. Some contractors' allocations contain only nonwithdrawable power; others contain both withdrawable and nonwithdrawable. Determining the mix of resources in the pool will affect both new and existing P–DP contractors.

Comments and discussion: Several commenters suggested creating the resource pool using only the nonwithdrawable part of the project's generation. Several others asked Western to only use withdrawable power whenever possible. Still others said Western should use withdrawable energy for the pool wherever possible and redesignate it as nonwithdrawable. Some commenters said no withdrawals have been made for at least 15 years, and that it is doubtful future withdrawals will be necessary. However, priority use power recipients said they will need both current and future project use withdrawals for the Yuma area. Another commenter contended that all P–DP power is withdrawable.

The Bureau of Reclamation is responsible for defining priority use requirements and for determining the amount of withdrawable power for the P–DP. When priority use power is requested, Western substantiates the requirements and makes the withdrawals. In its letter responding to Western's proposal to apply the PMI to P–DP (dated November 19, 2002), Reclamation stated,

> Reclamation today is unable to precisely identify the electric requirements of pumping that may be required Post 2008. There are prospective Reclamation plans which, consistent with the Gila Project Act and Yuma Project Act and the other Acts affecting the responsibility of Reclamation under the law, may require additional project pumping.

When reducing existing allocations for the post-2008 marketing period, Western will first take energy from contractors' withdrawable allocations up to the total reduction, when available. The remaining reductions will come from nonwithdrawable energy. This approach will create a resource pool with 5.11 percent withdrawable energy in summer. Using this procedure to reduce existing allocations, withdrawable energy in summer will make up 6.26 percent of the total allocation to Western's existing contractors. Western believes that reducing existing contractors' withdrawable energy first will result in a more equitable distribution of withdrawable and nonwithdrawable energy among current and new contractors. Using this process, the amount of withdrawable energy in the resource pool will more closely reflect the percentage of withdrawable and nonwithdrawable power in existing allocations.

Undepreciated Replacement Advances

Background: In the August 8, 2002, FRN (67 FR 51580), Western proposed that as provided in the current P–DP Advancement of Funds (AOF) contract, new customers will be required to reimburse existing customers for undepreciated replacement advances, to the extent existing customers' allocations are reduced as a result of creating the resource pool.

Comments and discussion: Several commenters asked Western to apportion the required advanced funding payments for undepreciated replacement expenses over time to avoid a financial burden for new customers. Western's Advancement of Funds contract (98–DSR–10870) already includes this provision in section 15.7. The contract states that Western will collect AOF payments from new contractors incrementally until the surcharge obligation has been satisfied. The collection begins 120 days after the effective date of the contract that carries out the withdrawal or reallocation of power. Western then pays the contractors that advanced the funds in five annual payments, beginning on the first anniversary of the withdrawal or reallocation.

Advance Funding

Background: In the August 8, 2002, FRN (67 FR 51580), Western proposed that customers who receive an allocation will also be required to participate in advance funding of Western's and the Bureau of Reclamation's operation and maintenance expenses.

Comments and discussion: Western received no comments on this requirement, so advance funding will be included as a requirement in the contracts.

Imperial Irrigation District's Allocation

Background: Several commenters have argued that Imperial Irrigation District (IID) should forfeit 15 MW of its P–DP allocation based on the Bureau of Reclamation's 1948 allocation of Davis Dam power that potentially subjected half of IID's 30–MW allocation to recapture when Pilot Knob Powerplant became operational. However, in 1954 the Bureau of Reclamation determined that the recapture of the 15 MW was not warranted. IID has been allocated at least 30 MW in all subsequent P–DP marketing actions.

Comments and discussion: Western received several requests to reduce Imperial Irrigation District's (IID) allocation by 15 MW. Western has reviewed the issue and has determined that there was, and is, no legal requirement for the Bureau of Reclamation or Western to reduce IID's allocation. IID's contract will be extended on the same basis as all other P–DP contracts.

Colorado River Commission's Allocation

Background: The Colorado River Commission (CRC) resells P–DP power to five manufacturing companies. This action has led to allegations that CRC is violating long-standing provisions of Reclamation Law by reselling its P–DP

energy to nonpreference customers. In response, CRC cites a 1980 Comptroller General decision that addressed a similar issue on the Falcon-Amistad Project. In that case, the Comptroller General ruled that the preference restriction pertained only to the initial sale of power and not to any subsequent sale by the preference customer, and that since the contract between the parties included no additional prohibition against resales, none existed.

Comments and discussion: Some commenters stated that CRC's allocation should be reduced by the amount of energy being resold to nonpreference entities. Historically, CRC has some customers that are nonpreference entities and CRC's contract with Western has allowed sales to these customers. Therefore, Western has no basis to reduce CRC's allocation because of these sales. Western will not reduce CRC's allocation as long as CRC complies with applicable laws, regulations, and the terms and conditions of its P–DP FES contract.

Native American Issues

Background: Western no longer requires utility status for Native American tribes as a prerequisite for receiving power allocations. That means more tribes may apply for allocations of P–DP hydropower as preference entities. In previous Western PMI remarketing efforts, tribes received a large part of resource pool allocations.

Comments and discussion: Some commenters said Western should create a larger resource pool. They believe that this would help Western allocate power that approximates 65 percent of qualified Native American applicants' load, a goal set during the Salt Lake City Area Integrated Projects (SLCA/IP) reallocation process. Western set the 65-percent level as a goal, not a requirement. It was also specific to the SLCA/IP remarketing effort.

Another commenter, who favored a complete reallocation, said it is unfair to prevent Native American tribes from participating fully in the current marketing effort, since the requirement for utility status prevented them from receiving P–DP allocations in the past. Western invites the tribes to participate fully in the current remarketing effort. In fact, Western has increased the resource pool size to 17 MW, making more resources available to potential new customers within the P–DP marketing area, including Native American tribes.

Another commenter asked Western to create a separate ''new user category'' for tribes. The comments included with the EPAMP regulations (60 FR 54151, 54167, October 20, 1995) state,

> Western declines to create a special class of power exclusively for tribes. In the absence of direction from Congress to the contrary, Western believes it is inequitable to create administratively a special, preferential classification for Indians.

In contrast, one commenter stated that his utility ''would strenuously object to another attempt to carve out a specific portion of whatever resource pool is created to meet additional tribal requirements.'' Western will accept applications from all eligible preference entities and will not set aside a specific part of the resource pool for any specific customer class.

Background: The Colorado River Indian Tribes (CRIT) have a reservation that spans parts of Arizona and California. The tribes applied for and received an allocation for the tribal load in Arizona; however, the load in California fell outside the SLCA/IP marketing area.

Comments and discussion: CRIT commented that Western told the tribes that they ''could look to Parker-Davis for the load that was not covered (by SLCA/IP).'' In a **Federal Register** notice concerning the SLCA/IP (67 FR 5113, 5114), published February 4, 2002, Western stated:

> Any expansion of the (SLCA/IP) marketing area to include portions of reservations in California is outside the scope of this effort. The portions of reservations in California are within the Parker-Davis Project marketing area. Power resource pools from these projects will be allocated effective upon expiration of existing contracts on September 30, 2008. Tribes with reservation lands and eligible loads in California may be able to participate in that process.

This statement does not amount to an entitlement for CRIT. However, Western welcomes resource allocation applications from all eligible preference customers, including tribes. We will address the application process and criteria in a future public process.

Other Comments

Western received a request to abandon Integrated Resource Planning (IRP) requirements for P–DP contractors. This request is outside the scope of this process. Section 114 of the National Energy Policy Act of 1992 (Pub. L. 102–486) requires all Western contractors to submit IRPs as a condition of receiving Federal hydropower. Since Western's PMI also requires contractors to complete IRPs, this requirement will continue for P–DP contractors.

A commenter asked that Western return unallocated energy to contractors on October 1, 2008. In 10 CFR part 905.32(e)(1), the PMI regulations state,

> If power is reserved for new customers but not allocated, or resources are offered but not placed under contract, this power will be offered on a pro rata basis to customers that contributed to the resource pool through application of the extension formula in § 905.33.

Other commenters asked Western to evaluate the P–DP resource in relationship to the requirements of the restructured and evolving power industry, and to work with the control area operator to ensure P–DP customers receive credit for their ancillary services. There is a great deal of uncertainty surrounding industry restructuring. The Federal Energy Regulatory Commission (FERC) has proposed a standard market design that has not been finalized. Several regional transmission organizations are attempting to form in the southwestern United States, including the P–DP marketing area. These organizations do not plan to begin operations for several years after the effective date of contract extensions. It is not possible to anticipate which changes will occur to the electric utility industry, or when. Western continually monitors utility industry changes and actively participates in regional organizations.

Western received a request to exempt Fredonia, Arizona, from the Central Arizona Project recovery cost because the town receives no benefits from CAP. Because the purpose of this process is to determine the applicability of the EPAMP PMI to the P–DP, this issue is outside the scope of this process.

Western was asked whether P–DP's operational integration with the Boulder Canyon Project (BCP) will continue. Applying the PMI also means applying the existing marketing plan. Therefore, operational integration will continue under the existing marketing plan contained in the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984).

Some commenters said that Western should evaluate whether project integration will continue past 2017. Changes to existing marketing criteria are outside the scope of this public process. It is too early to make decisions about contracts that expire 14 years from now in 2017.

The Metropolitan Water District of Southern California requested confirmation that it will be eligible for an allocation as a new customer. Dixie Power Water Light and Telephone requested that the P–DP marketing area be expanded to include Kane and

Washington counties in southern Utah. Because the purpose of this process is to determine the applicability of the EPAMP PMI to the P–DP, these issues are outside the scope of this public process. These issues may be addressed in a future public process regarding resource pool marketing criteria.

Western received comments to reopen the comment period. Some commenters wanted to respond to comments submitted during the first comment period. Western accepted comments after the official comment period ended, which gave commenters an opportunity to respond. However, Western received no new or additional information beyond that submitted during the comment period. We believe a new comment period is unnecessary. Western has enough information to make a decision.

Some commenters asked Western to recognize the agency relationship between a generation and transmission cooperative and a distribution cooperative. Another asked Western to prevent windfalls for utilities providing service to tribal customers that establish their own utility or change utility services providers. The commenter said the original provider's allocation should be reduced proportionately. These requests are outside the scope of this decision, and Western will resolve questions regarding cooperatives' and providing utilities' relationships and allocations as they arise.

Western was also asked to replace generation lost through water transfers caused by water use and operational needs. Western does not have control of water transfer decisions. The Bureau of Reclamation decides when to make water transfers, so this comment is outside the scope of this decision.

I. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to do a regulatory flexibility analysis if a rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

II. Small Business Regulatory Enforcement Fairness Act

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involving matters of procedure.

III. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, we require no clearance of this notice by the Office of Management and Budget.

IV. Environmental Compliance

Western completed an environmental impact statement (EIS) on EPAMP under the National Environmental Policy Act of 1969 (NEPA). Western published the Record of Decision in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to these actions have been analyzed.

Dated: April 17, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–11009 Filed 5–2–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[WI115–01–7345; FRL–7493–7]

Adequacy Status of the MOBILE6 Transportation Conformity Motor Vehicle Emissions Budgets for Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the Motor Vehicle Emissions Budgets (MVEB) in the January 31, 2003, Wisconsin State Implementation Plans (SIP) revision are adequate for conformity purposes. The submittal included MOBILE6 MVEB updates for the Milwaukee severe ozone area and the Sheboygan ozone maintenance area, and new maintenance plan MVEBs for the Manitowoc moderate ozone area and the Door marginal ozone area. On March 2, 1999, the DC Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Milwaukee, Sheboygan, Manitowoc, and Door areas can use the MVEBs from the submitted plan for future conformity determinations. These budgets are effective May 20, 2003.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Michael Leslie, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Wisconsin Department of Natural Resources on March 25, 2003, stating that the Milwaukee, Sheboygan, Manitowoc, and Door MVEBs in the submitted are adequate. This finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp/,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Transportation conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the EPA, may later disapprove the SIP.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999, memo titled ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision''). We followed the guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 22, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–11000 Filed 5–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7494–2]

Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) Microbial and Disinfectants/Disinfection Byproducts Advisory Committee (MDBPAC) was renewed on March 7, 2003, for an additional two-year period, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c). The MDBPAC provides advice and recommendations to the EPA Administrator on issues associated with the development of regulations to address microorganisms and disinfectants/disinfection byproducts in public water supplies. EPA has determined that continuation of the MDBPAC is necessary and that it is in the public interest to enable the Agency to perform its duties under the Safe Drinking Water Act.

Inquiries may be directed to Sharon Gonder, Designated Federal Officer, MDBPAC, U.S. EPA, MC–4607M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by e-mail at *gonder.sharon@epa.gov.*

Dated: April 28, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03–11001 Filed 5–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Accounting for Fiduciary Activities

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of New Exposure Draft *Accounting for Fiduciary Activities.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has published a new exposure draft, *Accounting for Fiduciary Activities.*

A summary of the proposed statements follows: On April 22, 2003, the Federal Accounting Standard Advisory Board (FASAB) released for public comment an exposure draft (ED), *Accounting for Fiduciary Activities.* The proposed standard provides guidance about how to account for and report fiduciary activity.

The exposure draft is available on the FASAB home page *http://www.fasab.gov/exposure draft.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *fontenroser@fasab.gov.*

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by June 8, 2003, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: April 28, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–10931 Filed 5–2–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2607]

Petitions for Reconsideration of Action in Rulemaking Proceedings

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by May 20, 2003. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject:

In the Matter of the Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules (ET Docket No. 01–75)

Telecommunications Industry Association, Petition for Rulemaking Regarding Digital Modulation for the Television Broadcast Auxiliary Service (RM–9418)

Alliance of Motion Picture and Television Producers, Petition for Rulemaking Regarding Low-Power Video Assist Devices in Portions of the UHF and VHF Television Bands (RM–9856)

Number of Petitions Filed: 2.

Subject:

In the Matter of the Stale or Moot docketed Proceedings, 1993

Annual Access Tariff Filings phase I (CC Docket No. 93–193)

1994 Annual Access Tariff Filings (CC Docket No. 94–65)

AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, And 5464 Phase II (CC Docket No. 93–193)

Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690 (CC Docket No. 94–157)

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–10969 Filed 5–2–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Wednesday, May7, 2003, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum re: BIF Assessment Rates for the Second Semiannual Assessment Period of 2003.

Memorandum re: SAIF Assessment Rates for the Second Semiannual Assessment Period of 2003.

Memorandum and resolution re: Notice of Proposed Rulemaking, Part 330—Deposit Insurance Coverage of Living Trust Accounts.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: April 30, 2003.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–11093 Filed 4–30–03; 4:33 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Guy F. Medley, Dothan, Alabama, and Michael A. Medley, Bonifay, Florida; to retain outstanding shares of Bonifay Holding Company, Inc. and The Bank of Bonifay, both of Bonifay, Florida.

Board of Governors of the Federal Reserve System, April 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–10955 Filed 5–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03–10563) published on pages 22703 and 22704 of the issue for Wednesday, April 30, 2003.

Under the Federal Reserve Bank of Kansas City heading, the entry for Gemini Bancshares, Inc., Monument, Colorado, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Financial Corporation, Hutchinson, Kansas to acquire up to 17.45 percent of the voting shares of Gemini Bancshares, Inc., Monument, Colorado, and thereby indirectly acquire voting shares of Integrity Bank & Trust, Monument, Colorado.

Comments on this application must be received by May 27, 2003.

Board of Governors of the Federal Reserve System, April 30, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11044 Filed 5–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. NHB Financial, Inc., Newel, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Hancock Bank and Trust Company, Newell, West Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire up to 39.95 percent of the voting shares of New Frontier Bancshares, Inc., St. Charles, Missouri, and thereby indirectly acquire New Frontier Bank, St. Charles, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Eden Financial Corporation, San Angelo, Texas; to acquire 100 percent of the voting shares of Laguna Bancshares, Inc., Big Lake, Texas, and thereby indirectly acquire voting shares of Laguna Bancshares of Delaware, Inc., Dover, Delaware, and Big Lake Bank, National Association, Big Lake, Texas.

Board of Governors of the Federal Reserve System, April 30, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11045 Filed 5–2–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03054]

Disease Progression in Persons Exposed to Asbestos Contaminated Vermiculite Ore; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104(i)(1)(E), (6), (7), (14) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(1)(E), (6), (7), (14), and (15)). The Catalog of Federal Domestic Assistance number is 93.161.

B. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to conduct health studies of disease occurrence and progression in persons exposed to vermiculite ore in Libby, Montana (MT) or shipped from Libby to other locations for packaging and processing. This program addresses the ''Healthy People 2010'' focus area of Environmental Health.

The purpose of the program is to conduct follow-up medical screening programs for persons exposed to vermiculite ore in Libby, MT or shipped from Libby to other locations for packaging and processing, who had past exposures to asbestos-contaminated vermiculite ore during processing and/or packaging, and who underwent past medical testing for asbestos related diseases. The findings of the follow-up medical screening program will then be compared with the pre-existing medical data on the same group of individuals to evaluate occurrence, severity, and progression of asbestos-related abnormalities. (*See* Attachment 1 of the announcement, as posted on the CDC Web site.)

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR:

1. Evaluate the human health risk from toxic sites and releases, and take action in a timely and responsive manner.

2. Ascertain the relationship between exposure to toxic substances and disease.

C. Eligible Applicants

Applications may be submitted by state and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments, and political subdivisions of states (in consultation with states)).

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $160,000 is available in FY 2003 to fund one to two awards. It is expected that the average award will be $80,000. It is expected that the awards will begin on or about July 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of grant funds, must perform a substantive role in carrying out project activities, and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds; however, justification must be provided. This should include a cost comparison of a lease versus purchase. The title to the equipment will be retained by ATSDR.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and ATSDR will be responsible for the activities listed in 2. ATSDR Activities.

1. Recipient Activities

a. Develop a protocol, conduct an evaluation of the target population and prepare a final report of the project. The protocol and report will each undergo scientific peer review as required by ATSDR.

b. Using an existing dataset, locate and trace individuals outside of Libby, MT who were exposed to vermiculite shipped from Libby. These individuals must have undergone previous medical screening (at least chest x-rays or spirometry, but optimally both chest x-rays and spirometry) for asbestos-related pulmonary abnormalities. Elapsed time should allow for latent abnormalities to become evident, *e.g.*, minimum 20 years latency.

c. Recipient must have access to medical records, previous x-rays and spirometry records related to past screening activities conducted for the eligible population.

d. Provide follow-up medical screening to the eligible population (as defined in b. and c. above), to include chest x-rays, spirometry, symptom questionnaire. The questionnaire should also ascertain details of potential exposures to asbestos.

e. Compare previous records to current findings and evaluate occurrence, severity, and progression of abnormalities consistent with asbestos exposure.

f. Provide results of testing and related education and counseling to the eligible population. Inform participants of actions that they and their health care providers can take to prevent or decrease the adverse impact of these potential asbestos exposure and related health effects, if any.

g. Identify deceased individuals among those who originally underwent testing. Obtain death certificates for these deceased persons and evaluate causes of mortality for inclusion in the final report. Specific attention should be given to asbestos-related mortality (*e.g.*, lung cancer, asbestosis, Mesothelioma, *etc.*).

2. ATSDR Activities

a. Work closely with the recipient in the design, review and development of the protocol and evaluation of the data. ATSDR will prepare and submit materials to the CDC Institutional Review Board (IRB) and external peer review.

b. Assist with the tracing and locating of individuals with past exposure.

c. Work with recipient to review available medical records for the eligible population.

d. Review data with the recipient in the evaluation of the severity and progression of abnormalities.

e. Facilitate meetings between recipient and ATSDR to coordinate planned efforts and review progress.

f. Assist with the preparation of final reports and fact sheets documenting the results of testing and related education and counseling materials for the eligible population.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The program plan timeline should briefly address activities to be conducted over the entire three-year project period.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 19, 2003. Submit the application to: Technical Information Management—PA#03054, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Proposed Program (50 percent). The criteria will include the extent to which the applicant's proposal and protocol addresses (a) the approach, feasibility, adequacy, and rationale of the proposed project design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the purpose section of this announcement, and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (c) the proposed timeline, including clearly established project objectives for which progress toward attainment can and will be measured; and (d) the proposed method to disseminate the results to state and local public health officials, participants, community residents, and other concerned individuals and organizations.

2. Program Personnel (30 percent). The criteria will include the extent to which the proposal has described (a) the qualifications, experience and commitment of the principal investigator (or project director), and his or her ability to devote adequate time and effort to provide effective leadership; and (b) the competence of associates to accomplish the proposed activity, their commitment, and the time they will devote.

3. Applicant Capability and Coordination Efforts (20 percent). The criteria will include the extent to which the proposal has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; and (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community.

4. Program Budget—(not scored). The criteria will include the extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

5. Human Subjects (not scored). The criteria will include the extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the

budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement as posted on the CDC Web site.

AR–1—Human Subjects.
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–7—Executive Order 12372 Review.
AR–9—Paperwork Reduction Act Requirements.
AR–10—Smoke-Free Workplace Requirements.
AR–11—Healthy People 2010.
AR–12—Lobbying Restrictions.
AR–17—Peer and Technical Reviews of Final Reports of Health Studies—ATSDR.
AR–18—Cost Recovery—ATSDR.
AR–19—Third Party Agreements—ATSDR.
AR–22—Research Integrity.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146, *Telephone:* (770) 488–2700.

For business management and budget assistance, contact: Edna Green, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2743, E-mail address: *ecg4@cdc.gov.*

For business management and budget assistance in the territories, contact: Jamie Legier, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146, Telephone: (770) 488–2635, E-mail address: *bzl3@cdc.gov.*

For program technical assistance, contact:

Dr. Vikas Kapil, Senior Medical Officer, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd., NE., MS E–31, Atlanta, GA 30333, Telephone: (404) 498–0545, E-mail address: *vck3@cdc.gov.*

0r:

Maggie Warren, Public Health Advisor, Division of Health Studies, Agency for Toxic Substances, 1600 Clifton Rd., NE., MS E–31, Atlanta, GA 30303, Telephone: (404) 498–0546, E-mail address: *mcs9@cdc.gov.*

Dated: April 30, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10978 Filed 5–2–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–64]

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: Evaluation Of Educational Materials Promoting Informed Decision-Making About Prostate Cancer Screening—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Prostate cancer is the second most commonly diagnosed cancer among men in the United States. An estimated 220,900 new cases of prostate cancer will be diagnosed, and 28,900 men will die from the disease in 2003. The effectiveness of prostate cancer screening has not been established. A number of clinical guidelines recommend that the potential risks and benefits of prostate cancer screening be explained to patients so that they may make an informed decision about screening. The purpose of this project is to evaluate the effectiveness of an informed-decision making booklet about prostate cancer screening developed by CDC.

The proposed study will consist of 3 tasks. In Task 1, the reliability and validity of a measurement instrument assessing prostate cancer knowledge and related variables will be tested. Two hundred men of all races aged 50 to 70 years and 200 African-American men aged 40 to 70 years will read the CDC booklet and complete the measurement instrument. In Task 2, 250 primary care physicians will complete a survey measuring their prostate cancer screening practices. The survey will be administered once and then again several months later. In Task 3, 600 men aged 50–70 years will take part in a randomized controlled trial. Men in the intervention group will be asked to read the CDC booklet and complete the measurement instrument tested in Task 1, and men in the control group will complete the measurement instrument without reading the CDC booklet. There is no cost to respondent except for their time.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Men, all races aged 50–70 years (validation study)	200	1	90/60	300
African-American men aged 40–70 years (validation study)	200	1	90/60	300
Primary care physicians	250	2	15/60	125
Men, all races aged 50–70 years (intervention group)	300	1	90/60	450
Men, all races aged 50–70 years (control group)	300	1	1	300
Total				1,475

Dated: April 29, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–10977 Filed 5–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03120]

Applied Research on Antimicrobial Resistance: Characterization of Strains of Community-Associated Methicillin-Resistant Staphylococcus Aureus; Notice of Availability of Funds

Application Deadline: June 19, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant program for Applied Research on Antimicrobial Resistance (AR): Characterization of Strains of Community-Associated Methicillin-Resistant Staphylococcus Aureus (MRSA). This program addresses the ''Healthy People 2010'' focus area of immunization and infectious diseases.

The purpose of the program is to provide assistance for applied research aimed at prevention and control of the emergence and spread of AR in the United States. This grant will focus on characterization of strains of community-associated MRSA.

This program's design will implement Part 1 of ''A Public Health Action Plan to Combat Antimicrobial Resistance, Domestic Issues.'' Visit the internet site: *http://www.cdc.gov/drugresistance/actionplan/index.htm* for more information on the Action Plan. See Attachments II and III on the CDC Web site (*http://www.cdc.gov*) for information related to this grant.

This research includes three components that will provide information needed to prevent and control AR: (1) Identification and access to a defined population of persons within which community-associated MRSA disease and data appear to be sufficiently prevalent to allow appropriate analyses; (2) obtaining strains of Staphylococcus aureus (S. aureus) causing disease in this population with appropriate, linked epidemiologic and clinical data; and (3) characterizing MRSA strains using a variety of molecular and biochemical techniques.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases (NCID): Reduce the spread of AR, and protect Americans from infectious diseases.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is:

- Universities
- Colleges
- Technical schools
- Research Institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian Tribes
- Indian tribal organizations
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $600,000 is available in FY 2003 to fund approximately three awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about August 30, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for all of the following activities:

1. Assemble a network of partners (a consortium) to accomplish the objectives of the program announcement, including identification and access to a defined population of persons within which there is community-associated MRSA disease and data sufficiently prevalent to allow appropriate analyses.

2. Obtain strains of *S. aureus* causing disease in this population with appropriate epidemiologic and clinical data to make findings generalizable to similar populations from diverse geographic areas. Ensure that the variety and quantity of distinguishable strain types included allow for valid comparisons between strain types.

3. Characterize strains and/or the relationship between these strains using a variety of molecular and biochemical techniques, including, Pulsed Field Gel Electropheresis (PFGE), Multi Locus Sub Typing (MLST), and Polymerase Chain Reaction (PCR) for virulence genes. Studies could include demonstrating the correlation of host response to disease and strain characteristics, or relative impact strain characteristics have on colonization or invasive disease.

F. Content

Letter of Intent (LOI)

An LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than five pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the peer review. It should include the following information: name, address, telephone number, and e-mail address of the Principal Investigator, the identities of other key personnel and participating institutions, and a narrative description of the proposed research project.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a detailed Research Plan, Objectives, Methods, an Evaluation Plan and Budget. The Research Plan should include activities to be conducted over the entire three year project period.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 4, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of PHS–398 (OMB Number 0925–0001) Adhere to the instructions on the Errata Instruction Sheet (posted on the CDC Web site) for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received on or before 4 p.m. Eastern Time, June 19, 2003. Submit the application to: Technical Information Management—PA03120, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. The applicant will be notified of their failure to meet submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals as stated in purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Upon receipt, applications will be reviewed for completeness and responsiveness jointly by PGO–TIM and the NCID Office of Extramural Research. Incomplete and/or non-responsive applications will be returned to the applicant without further consideration.

Dual-Level Peer Review: As part of the initial merit review, all applicants will receive a written critique based on the comments and recommendations of the scientific (peer) review group. The review of most research applications will also include a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed, assigned a priority score, and receive a second level review. The second level of review will be performed by either CDC senior staff or the NCID Board of Scientific Counselors. Senior staff or Board recommendations are based not only on considerations of scientific merit, as judged by the scientific (peer) review group, but also on the relevance of the proposed study to the Center's programs and priorities.

Review Criteria

The goal of this research is to prevent and control the emergence and spread of AR in the United States. In the written comments, reviewers will be asked to discuss the following aspects of the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals:

- Significance
- Approach
- Innovation
- Investigator
- Environment

The peer review group will address and consider each of these criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative but is essential to move a field forward.

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and

analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Are the investigators committed to collaborative and cooperative nature of this program?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and the priority score:

Protection of Human Subjects from Research Risk: The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed. (See criteria included in Attachment I).

Inclusion of Women, Minorities and Children in Research: The adequacy of plans to include subjects from both genders, all racial and ethnic groups (and subgroups), and children as appropriate for the scientific goals of the research. Plans for the recruitment and retention of subjects will also be evaluated. (See criteria included in Attachment I).

Public Health Importance: Does the applicant justify the proposed project as important to the prevention of community-associated MRSA?

Measures of Effectiveness: Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the purpose of the grant? Are the measures objective/quantitative and do they adequately measure the intended outcome.

Additional Considerations

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. (not scored)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activity Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7—Executive Order 12372
AR–10—Smoke Free Work Place Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–15—Proof of Non-Profit Status
AR–22—Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Merlin Williams, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2765, E-mail Address: *mqw6@cdc.gov.*

For business management and budget assistance in the Territories, contact: Steward Nichols, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2788, E-mail address: *shn8@cdc.gov.*

For program technical assistance, contact: Barbara Stewart, Program Analyst, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404–639–0045, E-mail address: *bstewart@cdc.gov.*

Dated: April 29, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10979 Filed 5–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03081]

Using Private Provider Partnerships To Strengthen the Immunization Message; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(1) of the Public Health Service Act (42 U.S.C. 247b(k)(1)), as amended. The Catalog of Federal Domestic Assistance number is 93.185.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for national private health care provider organizations to inform their constituency on immunization issues, identify best practices and successful immunization programs, promote the improvement of immunization coverage in primary care settings, and enhance and create partnerships with state and local health departments, non-governmental organizations, and other professional organizations to collaborate on immunization programs around the country. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purposes of the program are to:

1. Establish partnerships with national private provider organizations and associations to effectively utilize the combined resources of the public and private health care delivery systems.

2. Establish a mechanism to promote successful immunization programs, distribute current immunization information to the recipient constituency, and to gather information regarding the status of current programs at the grass-roots level.

3. Establish open lines of communication with the recipient organization and it's members for the purpose of sharing national goals and objectives for immunization programs.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Immunization Program (NIP):

1. Reduce the number of indigenous cases of vaccine-preventable diseases by increasing the number of children, adolescents and adults receiving vaccines recommended by the Advisory Committee on Immunization Practices (ACIP).

2. Ensure that two year-olds are appropriately vaccinated.

3. Increase the proportion of adults who are vaccinated annually against influenza and are vaccinated, as recommended, against pneumococcal disease.

C. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations
- Private nonprofit organizations

Health care providers have the greatest impact on the health of the public through provision of services and health information. To ensure that providers are receiving the most up-to-date and appropriate immunization information, it is important to form a collaboration between CDC and those organizations that providers are most likely to turn to for up-to-date practice information (*i.e.*, their professional medical organizations). To maximize the number of providers who benefit from this collaboration, the application is limited to professional associations with active memberships of at least 3,000 health care providers.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $800,000 is available in FY 2003 to fund up to six awards. It is expected that the average award will be $130,000, ranging from $125,000 to $140,000. It is expected that the awards will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to substitute new activities and expenditures for current ones.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Preference for funding may be given to:

1. Organizations with an immunization or public health focus that can be expanded or enhanced through funds.

2. Organizations with proven strategies to reach the largest audience.

3. Organizations showing new and innovative ways to reach new segments of the provider community.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under number 1. Recipient Activities. CDC will be responsible for the activities listed under number 2. CDC Activities.

1. Recipient Activities

a. Utilize recommendations by NIP, Advisory Committee on Immunization Practices (ACIP), American College of Physicians (ACP), American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) to create and distribute materials to promote the understanding, adoption, and use of those recommendations by health care providers, parents, and patients.

b. Establish and implement mechanisms for promoting effective immunization practices and programs, and support the incorporation of such practices within the facilities operated by affiliates.

c. Establish and implement a mechanism for distribution of current immunization news, practices, and strategies to health care providers within the constituency.

d. Participate in the planning of the organization's conferences and meetings on the national, regional, and state levels to ensure that appropriate priority is placed on strategies and model programs that increase immunization coverage levels.

e. Establish and implement mechanisms for evaluating the effectiveness of communication with the constituency regarding increased awareness in implementation of recommended practices.

2. CDC Activities

a. Provide technical assistance in implementing activities.

b. Identify major immunization issues.

c. Identify effective immunization programs.

d. Assist with setting program priorities.

e. Provide scientific collaboration for appropriate aspects of the activities.

f. Provide information on disease impact, vaccination coverage levels, and prevention strategies utilizing the recommendations of ACIP, ACP, AAP and AAFP.

g. Review immunization information developed by the recipient for accuracy and compliance with national recommendations.

h. Assist the recipient in evaluating the reach of the program and effectiveness of the materials produced.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will not be evaluated, but will be used to assist CDC in planning for the objective review for this program. The letter of intent should include the following information:

1. The name of the organization.

2. The primary contact person's name, mailing address, phone number, fax number and email address (if available).

3. The mission/activities of the organization.

4. The number of members in the organization.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of:

1. Organization Profile

a. Provide a narrative, including background information and information on the applicant organization, evidence of relevant experience in coordinating activities among constituents, and a clear understanding of the purpose of the project.

b. Include details of past experiences working with the constituency regarding promotion and education of immunization issues, or other healthcare issues. Provide information on organizational capability to conduct proposed project activities.

c. Profile qualified and experienced personnel who are available to work on the project and provide evidence of an organizational structure that can meet the terms of the project. Include an organizational chart of the applicant organization specifying the location and staffing plan for the proposed project.

2. Program Plan

a. Include goals and measurable impact and process objectives that are specific, realistic, and time-phased. Include an explanation of how the objectives contribute to the purposes of the request for assistance and evidence that demonstrates the potential effectiveness of the proposed objectives.

b. Detail an action plan, including a timeline of activities and personnel responsible for implementing each segment of the plan. The timeline should address activities to be conducted over the entire three-year project period.

c. Prepare a plan to include impact and process evaluation utilizing both quantitative and qualitative measures for the achievement of program objectives to determine the reach and effectiveness of the message promoted by the grantee, and monitor the implementation of proposed activities. Indicate how the quality of services provided will be ensured.

d. Provide a plan for disseminating project results indicating when, to whom, and in what format the material will be presented.

e. Provide a plan for obtaining additional resources from non-federal sources to supplement program activities and ensure continuation of the activities after the end of the project period.

3. Collaboration Activities

a. Obtain and include letters of support from local organizations and constituents indicating or committing to support the activities of this program.

b. Provide any memoranda of agreement from collaborating organizations indicating a willingness to participate in the project, the nature of their participation, period of performance, names and titles of individuals who will be involved in the project, and the process of collaboration. Each memorandum should also show an understanding and endorsement of immunization activities.

c. Provide evidence of collaborative efforts with health departments, provider organizations, coalitions, and other local organizations.

4. Budget Information

Provide a detailed budget with justification. The budget proposal should be consistent with the purpose and program plan of the proposed project.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before May 26, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 19, 2003. Submit the application to: Technical Information Management-PA#03081, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The Letter of Intent will not be evaluated, but will be used to assist CDC in planning for the review of applications.

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. *Capability (40 points):* The extent to which the applicant appears likely to succeed in implementing proposed activities as measured by relevant past experience, a sound management structure, and staff qualifications, including the appropriateness of their proposed roles and responsibilities and job descriptions.

The applicant must:

a. Have a demonstrated history of a constituency that provides immunization services including services to underserved, low-income, or minority populations.

b. Have a system in place for communicating with their constituents and providing them information in a timely manner.

2. *Program Plan (30 points)*: The feasibility and appropriateness of the applicant's action plan to identify immunization issues and new developments, communicate with and reach targeted populations, and translate technical immunization information into appropriate formats.

3. *Background and Need (20 points)*: The extent to which the applicant understands the problem of under-immunization and proposes a plan to address the issues specific to their constituents.

4. *Evaluation Plan (10 points)*: The extent to which the applicant proposes to evaluate the proposed plan, including impact and process evaluation, as well as quantitative and qualitative measures for achievement of program objectives, determining the improvement in level of immunization knowledge among the constituency, identify improvements made in immunization delivery by providers within the constituency, and monitoring the implementation of proposed activities.

5. *Budget and Justification (not scored):* The extent to which the proposed budget is adequately justified, reasonable, and consistent with the proposed project activities and this program announcement.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web site.

AR–10—Smoke-Free Workplace

AR–11—Healthy People 2010

AR–12—Lobbying Restriction

AR–14—Accounting System Requirements

AR–15—Proof of Non-Profit Status

AR–20—Conference Support

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Peaches Brown, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2738, E-mail address: *prb0@cdc.gov.*

For program technical assistance, contact: Valerie Morelli, Health Communication Specialist, Education, Information, and Partnership Branch, Immunization Services Division, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, M/S E–52, Atlanta, Georgia 30333, Telephone: 404–639–8091, E-mail address: *vxm4@cdc.gov.*

Dated: April 30, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10980 Filed 5–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Meeting

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 committee meeting:

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6:30 p.m.–9:30 p.m., May 18, 2003; 8 a.m.–4:30 p.m., May 19, 2003.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 6:30 p.m.–7 p.m., May 18, 2003.

Closed: 7 p.m.–9:30 p.m., May 18, 2003; 8 a.m.–4:30 p.m., May 19, 2003.

Purpose: This committee is charged with providing advice and guidance to the Secretary of Health and Human Services and the Director, CDC, regarding the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control and supports injury control research centers.

Matters to be Discussed: Agenda items include a budget update, recent awards, discussion of the review process and panelists' responsibilities, and review of grant applications. Beginning at 7 p.m., May 18, through 4:30 p.m., May 19, the Committee will review individual research grant applications submitted in response to Program Announcements #03023, Acute Care, Rehabilitation and Disability Prevention Research; #03024, Violence-Related Injury Prevention Research (Intimate Partner Violence and Sexual Violence); #03027, New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, Acute Care, Disability, and Rehabilitation-Related Research; #03028, Traumatic Injury Biomechanics Prevention Research; #03033, Dissemination Research of Effective Interventions; #03036, Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; and #03035, National Academic Centers of Excellence on Youth Violence Prevention.

This portion 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 Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Lynda S. Doll, PhD, Acting Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway,

NE., M/S K58, Atlanta, Georgia 30341–3724, telephone (770) 488–4696.

The Director, Management Analysis and Services office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 28, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10974 Filed 5–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Correction

In the **Federal Register** of April 10, 2003, Volume 68, Number 69, Page 17654 the following should read as follows:

Correction

Name: Board of Scientific Counselors, National Center for Infectious Diseases: Meeting.

Time and Date: 8:30 a.m.–3:30 p.m., May 2, 2003.

Place: CDC, Auditorium B, Building 1, 1600 Clifton Road, Atlanta, Georgia 30333.

Due to programmatic issues the corrected **Federal Register** notice is being published less than fifteen days before the meeting.

Contact Person for More Information: Tony Johnson, Office of the Director, NCID, CDC, Mailstop E–51, 1600 Clifton Road, NE., Atlanta, Georgia 30333, e-mail *tjohnson3@cdc.gov;* telephone 404/498–3249.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10976 Filed 5–1–03; 10:11 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

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 committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8 a.m.—5 p.m., May 19, 2003. 8 a.m.—2 p.m., May 20, 2003.

Place: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, Tennessee 37830, telephone (865) 481–2468, fax (865) 481–2474.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy (DOE) facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for this meeting will focus on the Program Status Report; NIOSH–IREP v5.2.1; United Kingdom Compensation Scheme for Radiation Linked Diseases; Workgroup Report on Dose Reconstruction Review Process; Future consideration on uncertainty in Interactive RadioEpidemiology Program (IREP); a refresher and update on Radiation Effectiveness Factors (REFs) assumed in IREP; a status report on epidemiologic studies of DOE workers; and, a presentation on FACA, Membership and Ethics.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 841–4498, fax (513) 458–7125.

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: April 28, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10975 Filed 5–2–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N–0038]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Records and Reports Concerning Experience With Approved New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by June 4, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to

sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Records and Reports Concerning Experience With Approved New Animal Drugs— (OMB Control Number 0910–0284)

Description: This final rule amends the provisions of the animal drug regulations concerning requirements for recordkeeping and reports concerning experience with approved new animal drugs. The information contained in the reports required by this rule enables FDA to monitor the use of new animal drugs after approval and to ensure their continued safety and efficacy. The reporting requirements include: (1) A report that provides information on product and manufacturing defects that may result in serious adverse drug events within 3 days of becoming aware the defect exists (§ 514.80(b)(1) (21 CFR 514.80(b)(1))); (2) a report that provides information on serious and unexpected adverse drug events and a followup report on such events (§ 514.80(b)(2)); (3) a summary report of increased frequency of adverse drug experiences (§ 514.80(b)(4)(v)); (4) a report from nonapplicants, such as distributors, to applicants providing information on adverse drug experiences (§ 514.80(b)(3)); (5) a periodic report with information on distribution, labeling, manufacturing or controls changes, new laboratory studies, and all adverse events in the reporting period (§ 514.80(b)(4)); (6) other reports that include special drug experience reports; and (7) reports for advertising and promotional labeling, and reports for distributor statements (§ 514.80(b)(5)). These reports must be kept for 5 years (§ 514.80(e)).

The final rule strengthens the current reporting system by requiring periodic reports every 6 months for the first 2 years following initial approval of an application rather than just for the first year following initial approval. The increased burden on applicants amounts to one additional periodic report. While greater than the reporting burden in the previous rule, this burden is less than that of the proposed rule which would have required quarterly periodic reports for 3 years following initial approval.

All periodic reports must be submitted with Form FDA 2301, ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs'' (OMB control number 0910–0012). Adverse drug experience reports must be submitted on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report'' (OMB control number 0910–0012).

In the **Federal Register** of February 4, 2002 (67 FR 5046), FDA invited comments on the interim final rule and the information collection requirements. Only one comment received pertained to information collection. That comment stated that the requirements under ''Multiple Applications'' do not appear to decrease but may increase the burden on the applicant. In particular, the comment questioned the requirement under § 514.80(c)(4) and requested clarification. The comment also voiced concern about an increased reporting burden due to the increasing number of approved applications for combinations of drugs for use in feeds since the implementation of the Animal Drug Availability Act of 1996. Further complicating the reporting issue is that frequently there are nonapplicants involved in the marketing of these combinations. The comment stated that with the exception of ''promotion literature,'' there is rarely any other information to be reported, suggesting that the ''promotion literature'' be submitted to the application held by either party, i.e., the nonapplicants or applicant, and not the application approved for the use of the combination of drugs.

In response, FDA notes that the provision of the regulation in question is currently codified under § 510.300(b)(4)(ii). The current regulation and the proposal in the interim final rule are similar. There is no increase of the reporting burden. It is not the intention of FDA for the implementation of § 514.80(c) to be different from the current requirement under § 510.300(b)(4)(ii). There is no additional reporting burden than that already covered under § 514.80(b)(4). Section 514.80(c) is not an additional information collection, i.e., in addition to § 514.80(b)(4); it is an administrative tool for industry to use to submit common information only once to FDA. Only information specific to a particular new animal drug application (NADA)/abbrieviated new animal drug application (ANADA) that is not common to all the applications must be included in the report for that particular NADA/ANADA; for example, labeling. With regard to the comment that there is an increased reporting burden due to the Animal Drug Availability Act of 1996, increased reporting is due to the increased number of approved applications. FDA consequently believes that this is a reasonable reporting requirement.

Description of Respondents: Applicant respondents are sponsors of approved NADAs and ANADAs. Nonapplicant respondents are those, other than the applicant, involved in manufacturing, processing, packing, labeling, or distributing new animal drugs.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(2)(i)/Original 15-day Alert Report/Form FDA 1932	190	55.26	12,283	1	12,283
514.80(b)(1)/3-day Field Alert Report/Form FDA 1932	190	0.32	95	1	95
514.80(b)(2)(ii)/Followup 15-day Alert Report/Form FDA 1932	190	17.90	6,007	1	6,007
514.80(b)(3)/Nonapplicant Report/Form FDA 1932	340	2.94	1,000	1	1,000
514.80(b)(4)/Periodic Drug Experience Report/Form FDA 2301, and 514.80(c) Multiple Applications[2]	190	7.11	1,226	11	13,486

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(4)(v)/Summary Report of Increased Frequency of Adverse Drug Experience	190	1.58	300	2	600
514.80(b)(5)(i)/Special Drug Experience Report/Form FDA 2301	190	0.13	25	2	50
514.80(b)(5)(ii)/Advertising and Promotional Materials Report/Form FDA 2301	190	2.11	772	2	1,544
514.80(b)(5)(iii)/Distributor's Statement Report/Form FDA 2301	530	0.14	56	2	112
Total					35,177

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting burden for § 514.80(b)(4)(iv)(A) is included in the reporting burden for § 514.80(b)(2)(i).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
514.80(e)[2]	530	28.22	19,385	0.5	9,693
514.80(e)[3]	530	4.06	2,379	10.35	24,623
Total					34,316

[1] Burden estimates were separated between Form FDA 1932 and Form FDA 2301 to reflect the difference in estimates for ''Hours per Respondent'' required.
[2] Recordkeeping estimates for § 514.80(b)(1), (b)(2)(i), (b)(2)(ii), and (b)(3); Form FDA 1932.
[3] Recordkeeping estimates for § 514.80(b)(2)(iii), (b)(4), (b)(5), and (c); Form FDA 2301.

Forms FDA 1932 and FDA 2301 for this collection of information are currently approved under OMB control number 0910–0012 and will not change due to implementation of this regulation. The reporting and recordkeeping burden estimates in this document are based on the submission of reports to the Division of Surveillance, Center for Veterinary Medicine. The total annual response numbers are based on the 2000 fiscal year submission of reports to the Division of Surveillance, Center for Veterinary Medicine. The numbers in tables 1 and 2 of this document are total burden associated with this regulation. Section 514.80(b)(3) and (b)(4)(v) are new information collection requirements over the current requirements.

Dated: April 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10932 Filed 5–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Health Resources and Services Administration

HRSA–03–099 Fiscal Year 2003 Competitive Cycle for the Bioterrorism Training and Curriculum Development Program (BTCDP) 93.996

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration announces that cooperative agreement applications will be accepted for the Bioterrorism Training and Curriculum Development Program for Fiscal Year 2003.

Purpose: The Bioterrorism Training and Curriculum Development Program consists of two discrete goals: (1) Provision of Continuing Education for practicing providers; and (2) Curricular Enhancement in health professions schools. Each area requires a separate application for funds.

Cooperative Agreements will be awarded to assist eligible entities to prepare a workforce of healthcare professionals to address the medical consequences of bioterrorism and other public health emergency preparedness and response issues. In this context, ''other public health emergencies'' includes other forms of terrorism (such as use of chemical, explosive, incendiary, or nuclear agents against the civilian population) as well as natural disasters and catastrophic accidents. Specifically, the goal of this program is the development of a healthcare workforce that possesses the knowledge, skills and abilities to: (1) Recognize indications of a terrorist event; (2) meet the acute care needs of patients, including pediatric and other vulnerable populations, in a safe and appropriate manner; (3) participate in a coordinated, multidisciplinary response to terrorist events and other public health emergencies; and (4) rapidly and effectively alert the public health system of such an event at the community, State, and national level.

Healthcare professionals provide a pivotal link to their communities. They disseminate accurate, responsible, trustworthy, and timely health related information to the public-at-large. This crucial component of the emergency response network helps to mitigate mortality and morbidity and to preserve public order while using resources effectively and efficiently. These professionals must be provided with the essential information needed to quickly identify a terrorist event; appropriately treat/respond to those in need of acute care; rapidly report such events to the public health authorities at the local, State and national levels, and participate in a coordinated and multidisciplinary response. The ability to meet the population's needs for acute

care during a public health emergency is dependent upon the rapid and coordinated efforts of appropriate community providers and local and State public health response systems.

Effective responses to public health emergencies require close collaboration among healthcare providers, medical specialists and other health professionals involved in patient care, the public health system, and the emergency response system. To achieve such a collaborative environment, it will be necessary to implement new models of undergraduate/graduate curricula and continuing education for health professionals that broaden public health knowledge and ensure that essential multidisciplinary and interdisciplinary collaborative responses to emergencies will occur.

It is expected that the training supported with these funds will involve a two-tiered approach—that will not only provide the discipline specific knowledge, skills and abilities needed to recognize, treat, and efficiently report instances of a terrorist event, but also will prepare the learners to participate in a multidisciplinary terrorist response. Each course of study shall include both discipline appropriate clinically oriented material and the team collaboration/coordination needed to respond to terrorist events. These activities will outline the integrated professional roles and responsibilities inherent in a community response and may include participation in drills, exercises and/or simulations.

Authorizing Legislation: These applications are solicited under section 319F(g) of the Public Health Service Act as amended by section 105 of the Public Health Security and Bioterrorism Response Act of 2002, Pub. L. 107–188 and the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), which provides approximately $26 million to support the training of a workforce of healthcare professionals to address Bioterrorism and other public health emergencies.

1. *Eligible Applicants for Continuing Education:* The entities eligible to apply for this program are academic health centers; other public or private nonprofit accredited or licensed health professions schools; other educational entities such as professional organizations and societies; private accrediting organizations; other nonprofit institutions or entities including faith-based organizations and community'based organizations; and multi-state or multi-institutional consortia of various combinations of these eligible entities.

(a) The applicant must demonstrate the ability to provide training to the full range of health care providers in an entire State, in a region of a State, or in a multi-State region, either by its own efforts or through partnerships or subcontracts.

(b) Applicants shall demonstrate, through programmatic descriptions and letters of support, linkages and relationships with entities that provide emergency preparedness and response training, including but not limited to the State Designated Agency for Emergency Preparedness, HRSA Hospital Preparedness Program awardees, the CDC Health Preparedness and Response for Bioterrorism Program awardees and the Metropolitan Medical Response System Participants. A comprehensive coordinated multi-disciplinary approach must be undertaken to effectively meet the needs without replication and redundancy.

(c) Applicants must establish and maintain a programmatic advisory board with members including representatives from the HRSA Hospital Preparedness Program, the CDC Public Health Preparedness and Response for Bioterrorism Program, an academic health center, other health professions schools, and both health service providers and consumers from the area served by the program. This advisory board shall meet no less than twice a year.

Targeted Trainees

The targeted trainees are both hospital and community-based health care providers, including, but not limited to, those serving in public and private hospitals, Community Health Centers, Migrant Health Centers, Federally Qualified Health Centers, National Health Service Corps sites, and private and group practice.

ESTIMATED NUMBER OF CONTINUING EDUCATION HEALTH PROFESSIONS TRAINEES

Target profession	Annual number to be trained
NHSC Providers	500
Health Center Administrators	500
Allied Health Providers	5,000
Nursing	10,000
Medicine	10,000
Nurse Practitioners	1,000
Physician Assistants	1,000
Dentists	1,000
Pharmacists	1,250
Mental Health Providers	1,500
Public Health Providers	1,000

ESTIMATED NUMBER OF CONTINUING EDUCATION HEALTH PROFESSIONS TRAINEES—Continued

Target profession	Annual number to be trained
Others to include EMS and Veterinarians	5,250
Total	38,000

In selecting from among the most highly ranked applications, efforts will be made to balance awards to achieve broad professional and geographical distribution.

2. *Eligible Applicants for Curricular Enhancement:* The entities eligible to apply for this program are public or private nonprofit accredited or licensed health professions schools; other educational entities such as professional organizations and societies; and other nonprofit institutions or entities including faith-based organizations and community-based organizations. Eligible entities, if not a health professions school, must include in their application the participation (*i.e.*, through partnerships/subcontracts) of such a school to implement the curricular enhancement. In selecting from among the most highly ranked applications, efforts will be made to balance the distribution of awards across the following types of health professions schools: Medicine, Nursing, Mental Health, Allied Health, and others. These awards will develop best practice models by piloting both the professionally specific curriculum and the curriculum enhancement process to be widely disseminated to other academic institutions across the country upon project completion.

Applicants shall demonstrate through programmatic descriptions and letters of support that the funds awarded will be utilized to support multidisciplinary training consisting of no fewer than three health care disciplines.

Awardees will:

1. Adapt/refine existing curricula or if necessary, develop new curriculum addressing their students' knowledge, skills and abilities to:

(a) Recognize indications of a terrorist event in their patients;

(b) Provide acute care in a safe and appropriate manner;

(c) Rapidly and effectively alert the public health system of such an event at the community, State, and national level; and

(d) Coordinate their response as part of a multi-disciplinary team approach to a terrorist event.

2. Pilot and evaluate the curriculum; and

3. Incorporate the training into their required overall curriculum within two years.

Federal Involvement

Federal: Division of State, Community and Public Health, AHEC Branch staff will:

- Review all changes to the composition of all advisory committees and boards;
- Participate in an annual evaluation of the cooperative agreement program;
- Assist in planning and implementing project priorities by coordinating and facilitating the interchange technical and program information;
- Assist project staff in the development, compilation and dissemination of materials prepared by project personnel;
- Review for programmatic content all contracts and agreements among recipient medical or osteopathic schools, other health professional schools and community-based centers (unless such reviews are formally delegated to the recipient cooperating school); and
- Provide guidance concerning the content, structure and form of the annual progress report and final project report.

Funding Priorities and/or Preference

None.

Statutory Matching or Cost Sharing Requirement

None.

Administrative Special Consideration

Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities. A special consideration is another factor considered in making funding decisions that is neither a review criterion, preference, nor priority.

Review Criteria

Applications will be reviewed by a panel of peer reviewers using the following criteria:

(1) *Purpose, Need and Rationale:* The extent to which the purpose is consistent with the legislative purpose and is clearly described and the extent to which the need for the proposed project is thoroughly documented;

(2) *Project Effectiveness:* The extent to which potential effectiveness of the proposed project in carrying out the education purposes of the Bioterrorism Training and Curriculum Development Program is clearly described;

(3) *Project Plan:* The extent to which the project plan is clearly articulated and specifies measurable outcome objectives which are attainable within the stated time frame;

(4) *Linkages and Collaborative Efforts:* The degree to which the applicant describes a comprehensive coordinated multidisciplinary approach to the training of health professionals;

(5) *Project Management:* The extent that the applicant identifies activities and outcomes that are related to the outcome objectives given the proposed level of staff, resources available, length of the project period and institutional eligibility; and

(6) *Fiscal Plan:* The extent to which the fiscal plan describes the effective use of funds and resources to carry out the project.

Estimated Amount of Available Funds

It is estimated that $26 million will be available for fiscal year 2003.

Estimated Number of Awards

It is estimated that the number of awards may vary for Continuing Education from 15–25.

It is estimated that the number of awards may vary for the Curricular Enhancement from 10–12.

Estimated Average Size of Each Award

It is estimated that the average size of each award for Continuing Education may range from $900,000 to $1,500,000.

It is estimated that the average size of each award for Curricular Enhancement may range from $300,000 to $400,000.

Estimated Project Period

Applications will be submitted for two years. The first budget period will be September 1, 2003 to August 31, 2004; the second budget period will be September 1, 2004 to August 31, 2005, subject to the availability of funds and evaluation of recipient performance.

Application Requests, Availability, Deadline and Addresses

Application materials are available for downloading via the web at *http://bhpr.hrsa.gov/grants/default.htm*. Applicants may also request a hard copy of the application material by contacting the HRSA Grants Application Center, Grants Management Office, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879 or by calling (877) 477–2123 or by Fax at 1–877–477–2345. In order to be considered for competition, applications must be postmarked or submitted to the address listed above by the due date of June 16, 2003. Applicants should request a legibly dated U.S. Postal postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. An application receipt will not be provided. Applications submitted after the deadline date will be returned to the applicant and not processed. Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Projected Award Date: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Lynn Rothberg Wegman, Division of State, Community and Public Health, Bureau of Health Professions, HRSA, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Wegman's telephone number is 301–443–1648.

Additional Information: Technical Assistance Workshops will be conducted at the following locations: Atlanta, GA; Boston, MA; Chicago, IL; Dallas, TX; Denver, CO; San Francisco, CA; and Washington, DC. Additional details, including the specific Dates for the workshops, may be obtained via the web at *http://bhpr.hrsa.gov/grants/default.htm*. Attendance at the workshops is optional and at the expense of the participant. Registration is required and may be completed by contacting Karen L. Ellis at (301) 315–2806 and Maria Smith at (301) 315–2844 or by registering on line at *http://meetings.Z-techcorp.com/meetings*.

Paperwork Reduction Act: The Application for the Bioterrorism Training and Curriculum Development Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Should any data collection associated with the evaluation of this cooperative agreement fall under the purview of the Paperwork Reduction Act, OMB clearance will be sought. The OMB clearance number is 00915–0060.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 18, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–10934 Filed 5–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

OIG Compliance Program Guidance for Pharmaceutical Manufacturers

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice

SUMMARY: This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for Pharmaceutical Manufacturers developed by the Office of Inspector General (OIG). Through this notice, the OIG is setting forth its general views on the value and fundamental principles of compliance programs for pharmaceutical manufacturers and the specific elements that pharmaceutical manufacturers should consider when developing and implementing an effective compliance program.

FOR FURTHER INFORMATION CONTACT: Mary E. Riordan or Nicole C. Hall, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

Compliance program guidance is a major initiative of the OIG in its effort to engage the health care community in preventing and reducing fraud and abuse in federal health care programs. The purpose of the compliance program guidance is to encourage the use of internal controls to efficiently monitor adherence to applicable statutes, regulations and program requirements. In the last several years, the OIG has developed and issued compliance program guidance directed at the following segments of the health care industry: the hospital industry; home health agencies; clinical laboratories; third-party medical billing companies; the durable medical equipment, prosthetics, orthotics and supply industry; Medicare+Choice organizations offering coordinated care plans; hospices; nursing facilities; individual and small group physician practices; and ambulance suppliers.

Copies of these compliance program guidances can be found on the OIG Web site at *http://oig.hhs.gov/fraud/complianceguidance.html.*

Developing the Compliance Program Guidance for Pharmaceutical Manufacturers

On June 11, 2001, the OIG published a solicitation notice seeking information and recommendations for developing compliance program guidance for the pharmaceutical industry (66 FR 31246). In response to that solicitation notice, the OIG received eight comments from various outside sources. We carefully considered those comments, as well as previous OIG publications, such as other compliance program guidances and Special Fraud Alerts. In addition, we have taken into account past and ongoing fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted with the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration). In an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, draft compliance program guidance for the pharmaceutical industry was published in the **Federal Register** on October 3, 2002 (67 FR 62057) for further comments and recommendations.

Elements for an Effective Compliance Program

This compliance program guidance for pharmaceutical manufacturers contains seven elements that have been widely recognized as fundamental to an effective compliance program:

- Implementing written policies and procedures;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected problems and undertaking corrective action.

These elements are included in previous guidances issued by the OIG. As with previously issued guidances, this compliance program guidance represents the OIG's suggestions on how pharmaceutical manufacturers can establish internal controls to ensure adherence to applicable rules and program requirements. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program. The document is intended to present voluntary guidance to the industry and not to represent binding standards for pharmaceutical manufacturers.

Office of Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services is continuing in its efforts to promote voluntary compliance programs for the health care industry. This compliance guidance is intended to assist companies that develop, manufacture, market, and sell pharmaceutical drugs or biological products (pharmaceutical manufacturers) in developing and implementing internal controls and procedures that promote adherence to applicable statutes, regulations, and requirements of the federal health care programs[1] and in evaluating and, as necessary, refining existing compliance programs.

This guidance provides the OIG's views on the fundamental elements of pharmaceutical manufacturer compliance programs and principles that each pharmaceutical manufacturer should consider when creating and implementing an effective compliance program. This guide is not a compliance program. Rather, it is a set of guidelines that pharmaceutical manufacturers should consider when developing and implementing a compliance program or evaluating an existing one. For those manufacturers with an existing compliance program, this guidance may serve as a benchmark or comparison against which to measure ongoing efforts.

A pharmaceutical manufacturer's implementation of an effective compliance program may require a significant commitment of time and resources by various segments of the organization. In order for a compliance program to be effective, it must have the support and commitment of senior management and the company's governing body. In turn, the corporate leadership should strive to foster a culture that promotes the prevention, detection, and resolution of instances of problems. Although an effective compliance program may require a reallocation of existing resources, the long-term benefits of establishing a compliance program significantly outweigh the initial costs.

In a continuing effort to collaborate closely with the pharmaceutical industry, the OIG published a notice in

[1] (Endnotes appear at end of document)

the **Federal Register** soliciting comments and recommendations on what should be included in this compliance program guidance.[2] Following our review of comments received in response to the solicitation notice, we published draft compliance guidance in the **Federal Register** in order to solicit further comments and recommendations.[3] In addition to considering the comments received in response to that solicitation notice and the draft compliance guidance, in finalizing this guidance we reviewed previous OIG publications, including OIG advisory opinions, safe harbor regulations (including the preambles) relating to the federal anti-kickback statute,[4] Special Fraud Alerts, as well as reports issued by the OIG's Office of Audit Services and Office of Evaluation and Inspections relevant to the pharmaceutical industry. (These materials are available on the OIG Web page at *http://oig.hhs.gov.*) In addition, we relied on the experience gained from investigations of pharmaceutical manufacturers conducted by OIG's Office of Investigations, the Department of Justice, and the state Medicaid Fraud Control Units. We also held meetings with four groups of industry stakeholders—Pharmaceutical Research and Manufacturers of America (PhRMA) and pharmaceutical manufacturer representatives; health plan and health plan association representatives; representatives of pharmacy benefit managers (PBMs) and representatives of the American Medical Association (AMA) and its member organizations.

A. Benefits of a Compliance Program

The OIG believes a comprehensive compliance program provides a mechanism that addresses the public and private sectors' mutual goals of reducing fraud and abuse; enhancing health care provider operational functions; improving the quality of health care services; and reducing the cost of health care. Attaining these goals provides positive results to the pharmaceutical manufacturer, the government, and individual citizens alike. In addition to fulfilling its legal duty to avoid submitting false or inaccurate pricing or rebate information to any federal health care program or engaging in illegal marketing activities, a pharmaceutical manufacturer may gain important additional benefits by voluntarily implementing a compliance program. The benefits may include:

- A concrete demonstration to employees and the community at large of the company's commitment to honest and responsible corporate conduct;
- An increased likelihood of preventing, or at least identifying, and correcting unlawful and unethical behavior at an early stage;
- A mechanism to encourage employees to report potential problems and allow for appropriate internal inquiry and corrective action; and
- Through early detection and reporting, minimizing any financial loss to the government and any corresponding financial loss to the company.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate improper conduct from the operations of a pharmaceutical manufacturer. However, a good faith effort by the company to comply with applicable statutes and regulations as well as federal health care program requirements, demonstrated by an effective compliance program, significantly reduces the risk of unlawful conduct and any penalties that result from such behavior.

B. Application of Compliance Program Guidance

Given the wide diversity within the pharmaceutical industry, there is no single ''best'' pharmaceutical manufacturer compliance program. The OIG recognizes the complexities of this industry and the differences among industry members. Some pharmaceutical manufacturers are small and may have limited resources to devote to compliance measures. Conversely, other companies are well-established, large multi-national corporations with a widely dispersed work force. Some companies may have well-developed compliance programs already in place; others only now may be initiating such efforts. The OIG also recognizes that pharmaceutical manufacturers are subject to extensive regulatory requirements in addition to fraud and abuse-related issues and that many pharmaceutical manufacturers have addressed these obligations through compliance programs. Accordingly, the OIG strongly encourages pharmaceutical manufactures to develop and implement or refine (as necessary) compliance elements that uniquely address the areas of potential problems, common concern, or high risk that apply to their own companies (or, as applicable, to the U.S. operations of their companies).

For example, although they are not exhaustive of all potential risk areas, the OIG has identified three major potential risk areas for pharmaceutical manufacturers: (1) Integrity of data used by state and federal governments to establish payment; (2) kickbacks and other illegal remuneration; and (3) compliance with laws regulating drug samples. The risk areas are discussed in greater detail in section II.B.2. below. The compliance measures adopted by a pharmaceutical manufacturer should be tailored to fit the unique environment of the company (including its organizational structure, operations and resources, as well as prior enforcement experience). In short, the OIG recommends that each pharmaceutical manufacturer should adapt the objectives and principles underlying the measures outlined in this guidance to its own particular circumstances.[5]

II. Compliance Program Elements

A. The Basic Compliance Elements

The OIG believes that every effective compliance program must begin with a formal commitment by the pharmaceutical manufacturer's board of directors or other governing body. Evidence of that commitment should include the allocation of adequate resources, a timetable for the implementation of the compliance measures, and the identification of an individual to serve as a compliance officer to ensure that each of the recommended and adopted elements is addressed. Once a commitment has been undertaken, a compliance officer should immediately be chosen to oversee the implementation of the compliance program.

The elements listed below provide a comprehensive and firm foundation upon which an effective compliance program may be built. Further, they are likely to foster the development of a corporate culture of compliance. The OIG recognizes that full implementation of all elements may not be immediately feasible for all pharmaceutical manufacturers. However, as a first step, a good faith and meaningful commitment on the part of the company's management will substantially contribute to the program's successful implementation. As the compliance program is implemented, that commitment should filter down through management to every employee and contractor of the pharmaceutical manufacturer, as applicable for the particular individual.

At a minimum, a comprehensive compliance program should include the following elements:

(1) The development and distribution of written standards of conduct, as well as written policies, procedures and protocols that verbalize the company's commitment to compliance (*e.g.*, by including adherence to the compliance

program as an element in evaluating management and employees) and address specific areas of potential fraud and abuse, such as the reporting of pricing and rebate information to the federal health care programs, and sales and marketing practices;

(2) The designation of a compliance officer and other appropriate bodies (*e.g.*, a corporate compliance committee) charged with the responsibility for developing, operating, and monitoring the compliance program, and with authority to report directly to the board of directors and/or the president or CEO;

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The creation and maintenance of an effective line of communication between the compliance officer and all employees, including a process (such as a hotline or other reporting system) to receive complaints or questions, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation;

(5) The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problems;

(6) The development of policies and procedures addressing the non-employment or retention of individuals or entities excluded from participation in federal health care programs, and the enforcement of appropriate disciplinary action against employees or contractors who have violated company policies and procedures and/or applicable federal health care program requirements; and

(7) The development of policies and procedures for the investigation of identified instances of noncompliance or misconduct. These should include directions regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action and preventive measures and processes to report the offense to relevant authorities in appropriate circumstances.

B. Written Policies and Procedures

In developing a compliance program, every pharmaceutical manufacturer should develop and distribute written compliance standards, procedures, and practices that guide the company and the conduct of its employees in day-to-day operations. These policies and procedures should be developed under the direction and supervision of the compliance officer, the compliance committee, and operational managers. At a minimum, the policies and procedures should be provided to all employees who are affected by these policies, and to any agents or contractors who may furnish services that impact federal health care programs (*e.g.*, contractors involved in the co-promotion of a manufacturer's products).

1. Code of Conduct

Although a clear statement of detailed and substantive policies and procedures is at the core of a compliance program, the OIG recommends that pharmaceutical manufacturers also develop a general corporate statement of ethical and compliance principles that will guide the company's operations. One common expression of this statement of principles is the code of conduct. The code should function in the same fashion as a constitution, *i.e.*, as a document that details the fundamental principles, values, and framework for action within an organization. The code of conduct for a pharmaceutical manufacturer should articulate the company's expectations of commitment to compliance by management, employees, and agents, and should summarize the broad ethical and legal principles under which the company must operate. Unlike the more detailed policies and procedures, the code of conduct should be brief, easily readable, and cover general principles applicable to all employees.

As appropriate, the OIG strongly encourages the participation and involvement of the pharmaceutical manufacturer's board of directors, CEO, president, members of senior management, and other personnel from various levels of the organizational structure in the development of all aspects of the compliance program, especially the code of conduct. Management and employee involvement in this process communicates a strong and explicit commitment by management to foster compliance with applicable federal health care program requirements. It also communicates the need for all employees to comply with the organization's code of conduct and policies and procedures.

2. Specific Risk Areas

This section is intended to help prudent pharmaceutical manufacturers identify areas of their operations that present potential risk of liability under several key federal fraud and abuse statutes and regulations.[6] This section focuses on areas that are currently of concern to the enforcement community and is not intended to address all potential risk areas for pharmaceutical manufacturers. Importantly, the identification of a particular practice or activity in this section is not intended to imply that the practice or activity is necessarily illegal in all circumstances or that it may not have a valid or lawful purpose underlying it.

This section addresses the following areas of significant concern for pharmaceutical manufacturers: (1) Integrity of data used by state and federal governments to establish payment amounts; (2) kickbacks and other illegal remuneration; and (3) compliance with laws regulating drug samples.

This guidance does not create any new law or legal obligations, and the discussions that follow are not intended to present detailed or comprehensive summaries of lawful and unlawful activity. Rather, these discussions should be used as a starting point for a manufacturer's legal review of its particular practices and for development of policies and procedures to reduce or eliminate potential risk.

a. Integrity of Data Used To Establish or Determine Government Reimbursement. Many federal and state health care programs establish or ultimately determine reimbursement rates for pharmaceuticals, either prospectively or retrospectively, using price and sales data directly or indirectly furnished by pharmaceutical manufacturers. The government sets reimbursement with the expectation that the data provided are complete and accurate. The knowing submission of false, fraudulent, or misleading information is actionable. A pharmaceutical manufacturer may be liable under the False Claims Act[7] if government reimbursement (including, but not limited to, reimbursement by Medicare and Medicaid) for the manufacturer's product depends, in whole or in part, on information generated or reported by the manufacturer, directly or indirectly, and the manufacturer has knowingly (as defined in the False Claims Act) failed to generate or report such information completely and accurately. Manufacturers may also be liable for civil money penalties under various laws, rules and regulations. Moreover, in some circumstances, inaccurate or incomplete reporting may be probative of liability under the federal anti-kickback statute.

Where appropriate, manufacturers' reported prices should accurately take into account price reductions, cash discounts, free goods contingent on a purchase agreement, rebates, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or

other price concessions or similar benefits offered to some or all purchasers. Any discount, price concession, or similar benefit offered on purchases of multiple products should be fairly apportioned among the products (and could potentially raise anti-kickback issues). Underlying assumptions used in connection with reported prices should be reasoned, consistent, and appropriately documented, and pharmaceutical manufacturers should retain all relevant records reflecting reported prices and efforts to comply with federal health care program requirements.

Given the importance of the Medicaid Rebate Program, as well as other programs that rely on Medicaid Rebate Program benchmarks (such as the 340B Program [8]), manufacturers should pay particular attention to ensuring that they are calculating Average Manufacturer Price and Best Price accurately and that they are paying appropriate rebate amounts for their drugs.[9]

In sum, pharmaceutical manufacturers are responsible for ensuring the integrity of data they generate that is used for government reimbursement purposes.

b. Kickbacks and Other Illegal Remuneration—*A. General Considerations.* Pharmaceutical manufacturers, as well as their employees and agents, should be aware of the federal anti-kickback statute and the constraints it places on the marketing and promotion of products reimbursable by the federal health care programs, including, but not limited to, Medicare and Medicaid. In the health care sector, many common business activities, including, for example, sales, marketing, discounting, and purchaser relations, potentially implicate the anti-kickback statute. Pharmaceutical manufacturers and their employees and agents should be aware that the anti-kickback statute prohibits in the health care industry some practices that are common in other business sectors. In short, practices that may be common or longstanding in other businesses are not necessarily acceptable or lawful when soliciting federal health care program business.

The anti-kickback statute is a criminal prohibition against payments (in any form, whether the payments are direct or indirect) made purposefully to induce or reward the referral or generation of federal health care business. The anti-kickback statute addresses not only the offer or payment of anything of value for patient referrals, but also the offer or payment of anything of value in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or ordering of any item or service reimbursable in whole or part by a federal health care program. The statute extends equally to the solicitation or acceptance of remuneration for referrals. Liability under the anti-kickback statute is determined separately for each party involved. In addition to criminal penalties, violators may be subject to civil monetary sanctions and exclusion from the federal health care programs. Under certain circumstances, a violation of the anti-kickback statute may give rise to liability under the False Claims Act.

Although liability under the anti-kickback statute ultimately turns on a party's intent, it is possible to identify arrangements or practices that may present a significant potential for abuse. Initially, a manufacturer should identify any remunerative relationship between itself (or its representatives) and persons or entities in a position to generate federal health care business for the manufacturer directly or indirectly. Persons or entities in a position to generate federal health care business include, for example, purchasers, benefit managers, formulary committee members, group purchasing organizations (GPOs), physicians and certain allied health care professionals, and pharmacists. The next step is to determine whether any *one* purpose of the remuneration may be to induce or reward the referral or recommendation of business payable in whole or in part by a Federal health care program. Importantly, a lawful purpose will not legitimize a payment that also has an unlawful purpose.

Although any arrangement satisfying both tests requires careful scrutiny from a manufacturer, the courts have identified several potentially aggravating considerations that can be useful in identifying arrangements at greatest risk of prosecution. In particular, manufacturers should ask the following questions, among others, about any problematic arrangements or practices they identify:

- Does the arrangement or practice have a potential to interfere with, or skew, clinical decision-making? Does it have a potential to undermine the clinical integrity of a formulary process? If the arrangement or practice involves providing information to decision-makers, prescribers, or patients, is the information complete, accurate, and not misleading?
- Does the arrangement or practice have a potential to increase costs to the federal health care programs, beneficiaries, or enrollees? Does the arrangement or practice have the potential to be a disguised discount to circumvent the Medicaid Rebate Program Best Price calculation?
- Does the arrangement or practice have a potential to increase the risk of overutilization or inappropriate utilization?
- Does the arrangement or practice raise patient safety or quality of care concerns?

Manufacturers that have identified problematic arrangements or practices can take a number of steps to reduce or eliminate the risk of an anti-kickback violation. Detailed guidance relating to a number of specific practices is available from several sources. Most importantly, the anti-kickback statute and the corresponding regulations establish a number of ''safe harbors'' for common business arrangements, including personal services and management contracts, 42 CFR 1001.952(d), warranties, 42 CFR 1001.952(g), discounts, 42 CFR 1001.952(h), employment, 42 CFR 1001.952(i), GPOs, 42 CFR 1001.952(j), and certain managed care and risk sharing arrangements, 42 CFR 1001.952(m), (t), and (u). *Safe harbor protection requires strict compliance with all applicable conditions set out in the relevant safe harbor.* Although compliance with a safe harbor is voluntary and failure to comply with a safe harbor does not mean an arrangement is illegal, many arrangements can be structured to fit in safe harbors, and we recommend that pharmaceutical manufacturers structure arrangements to fit in a safe harbor whenever possible. Other available guidance includes special fraud alerts and advisory bulletins issued by the OIG identifying and discussing particular practices or issues of concern and OIG advisory opinions issued to specific parties about their particular business arrangements. Parties may apply for an OIG advisory opinion using the procedures set out at 42 CFR part 1008. The safe harbor regulations (and accompanying **Federal Register** preambles), fraud alerts and bulletins, advisory opinions (and instructions for obtaining them), and other guidance are available on the OIG web site at *http://oig.hhs.gov.*

B. Key Areas of Potential Risk. The following discussion highlights several known areas of potential risk. The propriety of any particular arrangement can only be determined after a detailed examination of the attendant facts and circumstances. *The identification of a given practice or activity as ''suspect'' or as an area of ''risk'' does not mean it is necessarily illegal or unlawful, or that it*

cannot be properly structured to fit in a safe harbor. Nor does it mean that the practice or activity is not beneficial from a clinical, cost, or other perspective. Rather, the areas identified below are those areas of activity that have a potential for abuse based on historical law enforcement experience and that should receive close scrutiny from manufacturers. The discussion highlights potential risks under the anti-kickback statute arising from pharmaceutical manufacturers' relationships with three groups: purchasers (including those using formularies) and their agents; persons and entities in a position to make or influence referrals (including physicians and other health care professionals); and sales agents.

(1) Relationships with Purchasers and their Agents—(a) Discounts and Other Remuneration to Purchasers. Pharmaceutical manufacturers offer purchasers a variety of price concessions and other remuneration to induce the purchase of their products. Purchasers include direct purchasers (*e.g.,* hospitals, nursing homes, pharmacies, some physicians), as well as indirect purchasers (*e.g.,* health plans). Inducements offered to purchasers potentially implicate the anti-kickback statute if the purchased products are reimbursable to the purchasers, in whole or in part, directly or indirectly, by any of the federal health care programs. Any remuneration from a manufacturer provided to a purchaser that is expressly or impliedly related to a sale potentially implicates the anti-kickback statute and should be carefully reviewed.

Discounting arrangements are prevalent in the pharmaceutical industry and deserve careful scrutiny particularly because of their potential to implicate the Best Price requirements of the Medicaid Rebate Program. Because the Medicaid Rebate Program in many instances requires that states receive rebates based on the Best Price offered by a pharmaceutical manufacturer to other purchasers, manufacturers have a strong financial incentive to hide *de facto* pricing concessions to other purchasers to avoid passing on the same discount to the states. Because of the potential direct and substantial effect of such practices on federal health care program expenditures and the interest of some manufacturers in avoiding price concessions that would trigger rebates to the states, any remuneration from a manufacturer to a purchaser, however characterized, should be carefully scrutinized.

Discounts. Public policy favors open and legitimate price competition in health care. Thus, the anti-kickback statute contains an exception for discounts offered to customers that submit claims to the federal health care programs, if the discounts are properly disclosed and accurately reported. *See* 42 U.S.C. 1320a–7b(b)(3)(A); 42 CFR 1001.952(h). However, to qualify for the exception, the discount must be in the form of a *reduction in the price* of the good or service based on an arms-length transaction. In other words, the exception covers only reductions in the product's price. Moreover, the regulations provide that the discount must be given at the time of sale or, in certain cases, set at the time of sale, even if finally determined subsequent to the time of sale (*i.e.*, a rebate).

Manufacturers offering discounts should thoroughly familiarize themselves, and have their sales and marketing personnel familiarize themselves, with the discount safe harbor at 42 CFR 1001.952(h) (and, if relevant, the safe harbors for price reductions in the managed care context, 42 CFR 1001.952(m), (t), and (u)). In particular, manufacturers should pay attention to the discount safe harbor requirements applicable to ''sellers'' and ''offerors'' of discounts. Under the safe harbor, sellers and offerors have specific obligations that include (i) informing a customer of any discount and of the customer's reporting obligations with respect to that discount, and (ii) refraining from any action that would impede a customer's ability to comply with the safe harbor. To fulfill the safe harbor requirements, manufacturers will need to know how their customers submit claims to the federal health care programs (*e.g.*, whether the customer is a managed care, cost-based, or charge-based biller). Compliance with the safe harbor is determined separately for each party.

Product Support Services. Pharmaceutical manufacturers sometimes offer purchasers certain support services in connection with the sale of their products. These services may include billing assistance tailored to the purchased products, reimbursement consultation, and other programs specifically tied to support of the purchased product. Standing alone, services that have no substantial independent value to the purchaser may not implicate the anti-kickback statute. However, if a manufacturer provides a service having no independent value (such as limited reimbursement support services in connection with its own products) in tandem with another service or program that confers a benefit on a referring provider (such as a reimbursement guarantee that eliminates normal financial risks), the arrangement would raise kickback concerns. For example, the anti-kickback statute would be implicated if a manufacturer were to couple a reimbursement support service with a promise that a purchaser will pay for ordered products only if the purchaser is reimbursed by a federal health care program.

Educational Grants. Pharmaceutical manufacturers sometimes provide grant funding for a wide range of educational activities. While educational funding can provide valuable information to the medical and health care industry, manufacturer grants to purchasers, GPOs, PBMs and similar entities raise concerns under the anti-kickback statute. Funding that is conditioned, in whole or in part, on the purchase of product implicates the statute, even if the educational or research purpose is legitimate. Furthermore, to the extent the manufacturer has any influence over the substance of an educational program or the presenter, there is a risk that the educational program may be used for inappropriate marketing purposes.

To reduce the risks that a grant program is used improperly to induce or reward product purchases or to market product inappropriately, manufacturers should separate their grant making functions from their sales and marketing functions. Effective separation of these functions will help insure that grant funding is not inappropriately influenced by sales or marketing motivations and that the educational purposes of the grant are legitimate. Manufacturers should establish objective criteria for making grants that do not take into account the volume or value of purchases made by, or anticipated from, the grant recipient and that serve to ensure that the funded activities are *bona fide.* The manufacturer should have no control over the speaker or content of the educational presentation. Compliance with such procedures should be documented and regularly monitored.

Research Funding. Manufacturers often contract with purchasers of their products to conduct research activities on behalf of the manufacturer on a fee-for-service basis. These contracts should be structured to fit in the personal services safe harbor whenever possible. Payments for research services should be fair market value for legitimate, reasonable, and necessary services. Post-marketing research activities should be especially scrutinized to ensure that they are legitimate and not simply a pretext to generate prescriptions of a drug. Prudent manufacturers will develop contracting procedures that

clearly separate the awarding of research contracts from marketing. Research contracts that originate through the sales or marketing functions—or that are offered to purchasers in connection with sales contacts—are particularly suspect.

Pharmaceutical manufacturers sometimes provide funding to their purchasers for use in the purchasers' own research. In many cases, the research provides valuable scientific and clinical information, improves clinical care, leads to promising new treatments, promotes better delivery of health care, or otherwise benefits patients. However, as with educational grants, if linked directly or indirectly to the purchase of product, research grants can be misused to induce the purchase of business without triggering Medicaid Best Price obligations. To reduce risk, manufacturers should insulate research grant making from sales and marketing influences.

Other remuneration to purchasers. As already noted, any remuneration from a manufacturer provided to a purchaser that is expressly or impliedly related to a sale potentially implicates the anti-kickback statute and should be carefully reviewed. Examples of remuneration in connection with a sale include, but are not limited to, ''prebates'' and ''upfront payments,'' other free or reduced-price goods or services, and payments to cover the costs of ''converting'' from a competitor's product. Selective offers of remuneration (*i.e.*, offers made to some but not all purchasers) may increase potential risk if the selection criteria relate directly or indirectly to the volume or value of business generated. In addition, manufacturers may contract with purchasers to provide services to the manufacturer, such as data collection services. These contracts should be structured whenever possible to fit in the personal services safe harbor; in all cases, the remuneration should be fair market value for legitimate, reasonable, and necessary services.

(b) Formularies and Formulary Support Activities. To help control drug costs while maintaining clinical appropriateness and quality of patient care, many purchasers of pharmaceutical products, including indirect purchasers such as health plans, have developed drug formularies to promote rational, clinically appropriate, safe, and cost-effective drug therapy. Formularies are a well-established tool for the effective management of drug benefits. The formulary development process—typically overseen by a committee of physicians, pharmacists, and other health care professionals—determines the drugs that are covered and, if tiered benefit levels are utilized, to which tier the drugs are assigned. So long as the determination of clinical efficacy and appropriateness of formulary drugs by the formulary committee precedes, and is paramount to, the consideration of costs, the development of a formulary is unlikely to raise significant issues under the anti-kickback statute.

Formulary support activities, including related communications with patients and physicians to encourage compliance, are an integral and essential component of successful pharmacy benefits management. Proper utilization of a formulary maximizes the cost-effectiveness of the benefit and assures the quality and appropriateness of the drug therapy. When provided by a PBM, these services are part of the PBM's formulary and benefit management function—a service provided to its customers—and markedly different from its purchasing agent/price negotiator role. Most importantly, the benefits of these formulary support activities inure directly to the PBM and its customers through lower costs.

To date, Medicare and Medicaid involvement with outpatient drug formularies has been limited primarily to Medicaid and Medicare managed care plans. In light of the safe harbors under the anti-kickback statute for those managed care arrangements, the financial arrangements between health plans and pharmaceutical manufacturers or, where the pharmacy benefit is managed by a PBM, the arrangements among the three parties, have received relatively little scrutiny. However, as federal program expenditures for, and coverage of, outpatient pharmaceuticals increase, scrutiny under the anti-kickback statute has also increased. Several practices appear to have the potential for abuse.

- *Relationships with formulary committee members.* Given the importance of formulary placement for a manufacturer's products, unscrupulous manufacturers and sales representatives may attempt to influence committee deliberations. Any remuneration from a manufacturer or its agents directly or indirectly to person in a position to influence formulary decisions related to the manufacturer's products are suspect and should be carefully scrutinized. Manufacturers should also review their contacts with sponsors of formularies to ensure that price negotiations do not influence decisions on clinical safety or efficacy.
- *Payments to PBMs.* Any rebates or other payments by drug manufacturers to PBMs that are based on, or otherwise related to, the PBM's customers' purchases *potentially* implicate the anti-kickback statute. Protection is available by structuring such arrangements to fit in the GPO safe harbor at 42 CFR 1001.952(j). That safe harbor requires, among other things, that the payments be authorized in advance by the PBM's customer and that all amounts actually paid to the PBM on account of the customer's purchases be disclosed in writing at least annually to the customer. In addition, arrangements with PBMs that assume risk may raise different issues; depending on the circumstances, protection for such arrangements may be available under the managed care safe harbors at 42 CFR 1001.952(m), (t) and (u).
- *Formulary placement payments.* Lump sum payments for inclusion in a formulary or for exclusive or restricted formulary status are problematic and should be carefully scrutinized.

In addition, some manufacturers provide funding for purchasers' or PBMs' formulary support activities, especially communications with physicians and patients. While the communications may indirectly benefit the manufacturer, the primary economic beneficiary is typically the formulary sponsor. In other words, the manufacturer's dollars appear to replace dollars that would or should be spent by the sponsor. To the extent the manufacturers' payments are linked to drug purchases directly or indirectly, they potentially implicate the anti-kickback statute. Among the questions that should be examined by a manufacturer in connection with these activities are: Is the funding tied to specific drugs or categories? If so, are the categories especially competitive? Is the formulary sponsor funding similar activities for other drug categories? Has funding of PBM activities increased as rebates are increasingly passed back to PBM customers?

(c) Average Wholesale Price. The ''spread'' is the difference between the amount a customer pays for a product and the amount the customer receives upon resale of the product to the patient or other payer. In many situations under the federal programs, pharmaceutical manufacturers control not only the amount at which they sell a product to their customers, but also the amount those customers who purchase the product for their own accounts and thereafter bill the federal health care programs will be reimbursed. To the extent that a manufacturer controls the ''spread,'' it controls its customer's profit.

Average Wholesale Price (AWP) is the benchmark often used to set reimbursement for prescription drugs under the Medicare Part B program. For covered drugs and biologicals, Medicare Part B generally reimburses at ''95 percent of average wholesale price.'' 42 U.S.C. 1395u(o). Similarly many state Medicaid programs and other payers base reimbursement for drugs and biologicals on AWP. Generally, AWP or pricing information used by commercial price reporting services to determine AWP is reported by pharmaceutical manufacturers.

If a pharmaceutical manufacturer purposefully manipulates the AWP to increase its customers' profits by increasing the amount the federal health care programs reimburse its customers, the anti-kickback statute is implicated. Unlike *bona fide* discounts, which transfer remuneration from a seller to a buyer, manipulation of the AWP transfers remuneration to a seller's immediate customer from a subsequent purchaser (the federal or state government). Under the anti-kickback statute, offering remuneration to a purchaser or referral source is improper if one purpose is to induce the purchase or referral of program business. In other words, it is illegal for a manufacturer knowingly to establish or inappropriately maintain a particular AWP if one purpose is to manipulate the ''spread'' to induce customers to purchase its product.

In the light of this risk, we recommend that manufacturers review their AWP reporting practices and methodology to confirm that marketing considerations do not influence the process. Furthermore, manufacturers should review their marketing practices. The conjunction of manipulation of the AWP to induce customers to purchase a product with active marketing of the spread is strong evidence of the unlawful intent necessary to trigger the anti-kickback statute. Active marketing of the spread includes, for example, sales representatives promoting the spread as a reason to purchase the product or guaranteeing a certain profit or spread in exchange for the purchase of a product.

(2) Relationships with Physicians and Other Persons and Entities in a Position to Make or Influence Referrals. Pharmaceutical manufacturers and their agents may have a variety of remunerative relationships with persons or entities in a position to refer, order, or prescribe—or influence the referral, ordering, or prescribing of—the manufacturers' products, even though the persons or entities may not themselves purchase (or in the case of GPOs or PBMs, arrange for the purchase of) those products. These remunerative relationships potentially implicate the anti-kickback statute. The following discussion focuses on relationships with physicians, but the same principles would apply when evaluating relationships with other parties in a position to influence referrals, including, without limitation, pharmacists and other health care professionals.

Manufacturers, providers, and suppliers of health care products and services frequently cultivate relationships with physicians in a position to generate business for them through a variety of practices, including gifts, entertainment, and personal services compensation arrangements. These activities have a high potential for fraud and abuse and, historically, have generated a substantial number of anti-kickback convictions. There is no substantive difference between remuneration from a pharmaceutical manufacturer or from a durable medical equipment or other supplier—if the remuneration is intended to generate any federal health care business, it potentially violates the anti-kickback statute.

Any time a pharmaceutical manufacturer provides anything of value to a physician who might prescribe the manufacturer's product, the manufacturer should examine whether it is providing a valuable tangible benefit to the physician with the intent to induce or reward referrals. For example, if goods or services provided by the manufacturer eliminate an expense that the physician would have otherwise incurred (*i.e.*, have independent value to the physician), or if items or services are sold to a physician at less than their fair market value, the arrangement may be problematic if the arrangement is tied directly or indirectly to the generation of federal health care program business for the manufacturer. Moreover, under the anti-kickback statute, neither a legitimate purpose for an arrangement (*e.g.*, physician education), nor a fair market value payment, will necessarily protect remuneration if there is also an illegal purpose (*i.e.*, the purposeful inducement of business).

In light of the obvious risks inherent in these arrangements, whenever possible prudent manufacturers and their agents or representatives should structure relationships with physicians to fit in an available safe harbor, such as the safe harbors for personal services and management contracts, 42 CFR 1001.952(d), or employees, 42 CFR 1001.952(i). *An arrangement must fit squarely in a safe harbor to be protected.* In addition, arrangements that do not fit in a safe harbor should be reviewed in light of the totality of all facts and circumstances, bearing in mind the following factors, among others:

- *Nature of the relationship between the parties.* What degree of influence does the physician have, directly or indirectly, on the generation of business for the manufacturer? Does the manufacturer have other direct or indirect relationships with the physician or members of the physician's group?
- *Manner in which the remuneration is determined.* Does the remuneration take into account, directly or indirectly, the volume or value of business generated (*e.g.*, is the remuneration only given to persons who have prescribed or agreed to prescribe the manufacturer's product)? Is the remuneration conditioned in whole or in part on referrals or other business generated? Is there any service provided other than referrals?
- *Value of the remuneration.* Is the remuneration more than trivial in value, including all gifts to any individual, entity, or group of individuals? [10] Do fees for services exceed the fair market value of any legitimate, reasonable, and necessary services rendered by the physician to the manufacturer?
- *Potential federal program impact of the remuneration.* Does the remuneration have the potential to affect costs to any of the federal health care programs or their beneficiaries or to lead to overutilization or inappropriate utilization?
- *Potential conflicts of interest.* Would acceptance of the remuneration diminish, or appear to diminish, the objectivity of professional judgment? Are there patient safety or quality of care concerns? If the remuneration relates to the dissemination of information, is the information complete, accurate, and not misleading?

These concerns are addressed in the PhRMA Code on Interactions with Healthcare Professionals (the ''PhRMA Code''), adopted on April 18, 2002, which provides useful and practical advice for reviewing and structuring these relationships. (The PhRMA Code is available through PhRMA's Web site at *http://www.phrma.org.*) Although compliance with the PhRMA Code will not protect a manufacturer as a matter of law under the anti-kickback statute, it will substantially reduce the risk of fraud and abuse and help demonstrate a good faith effort to comply with the applicable federal health care program requirements.

The following paragraphs discuss in greater detail several common or problematic relationships between manufacturers and physicians, including ''switching'' arrangements, consulting and advisory payments, payments for detailing, business courtesies and other gratuities, and educational and research activities.

• *Switching''* arrangements. As noted in the OIG's 1994 Special Fraud Alert (59 FR 65372; December 19, 1994), product conversion arrangements (also known as ''switching'' arrangements) are suspect under the anti-kickback statute. Switching arrangements involve pharmaceutical manufacturers offering physicians or others cash payments or other benefits each time a patient's prescription is changed to the manufacturer's product from a competing product. This activity clearly implicates the statute, and, while such programs may be permissible in certain managed care arrangements, manufacturers should review very carefully any marketing practices utilizing ''switching'' payments in connection with products reimbursable by federal health care programs.

Consulting and advisory payments. Pharmaceutical manufacturers frequently engage physicians and other health care professionals to furnish personal services as consultants or advisers to the manufacturer. In general, fair market value payments to small numbers of physicians for *bona fide* consulting or advisory services are unlikely to raise any significant concern. Compensating physicians as ''consultants'' when they are expected to attend meetings or conferences primarily in a passive capacity is suspect.

Also of concern are compensation relationships with physicians for services connected directly or indirectly to a manufacturer's marketing and sales activities, such as speaking, certain research, or preceptor or ''shadowing'' services. While these arrangements are potentially beneficial, they also pose a risk of fraud and abuse. In particular, the use of health care professionals for marketing purposes—including, for example, ghost-written papers or speeches—implicates the anti-kickback statute. While full disclosure by physicians of any potential conflicts of interest and of industry sponsorship or affiliation may reduce the risk of abuse, disclosure does not eliminate the risk.

At a minimum, manufacturers should periodically review arrangements for physicians' services to ensure that: (i) The arrangement is set out in writing; (ii) there is a legitimate need for the services; (iii) the services are provided; (iv) the compensation is at fair market value; and (v) all of the preceding facts are documented prior to payment. In addition, to further reduce their risk, manufacturers should structure services arrangements to comply with a safe harbor whenever possible.

Payments for detailing. Recently, some entities have been compensating physicians for time spent listening to sales representatives market pharmaceutical products. In some cases, these payments are characterized as ''consulting'' fees and may require physicians to complete minimal paperwork. Other companies pay physicians for time spent accessing web sites to view or listen to marketing information or perform ''research.'' All of these activities are highly suspect under the anti-kickback statute, are highly susceptible to fraud and abuse, and should be strongly discouraged.

Business Courtesies and Other Gratuities. Pharmaceutical companies and their employees and agents often engage in a number of other arrangements that offer benefits, directly or indirectly, to physicians or others in a position to make or influence referrals. Examples of remunerative arrangements between pharmaceutical manufacturers (or their representatives) and parties in a position to influence referrals include:

• Entertainment, recreation, travel, meals, or other benefits in association with information or marketing presentations; and

• Gifts, gratuities, and other business courtesies.

As discussed above, these arrangements potentially implicate the anti-kickback statute if any one purpose of the arrangement is to generate business for the pharmaceutical company. While the determination of whether a particular arrangement violates the anti-kickback statute depends on the specific facts and circumstances, compliance with the PhRMA Code with respect to these arrangements should substantially reduce a manufacturer's risk.

Educational and Research Funding. In some cases, manufacturers contract with physicians to provide research services on a fee-for-service basis. These contracts should be structured to fit in the personal services safe harbor whenever possible. Payments for research services should be fair market value for legitimate, reasonable, and necessary services. Research contracts that originate through the sales or marketing functions—or that are offered to physicians in connection with sales contacts—are particularly suspect. Indicia of questionable research include, for example, research initiated or directed by marketers or sales agents; research that is not transmitted to, or reviewed by, a manufacturer's science component; research that is unnecessarily duplicative or is not needed by the manufacturer for any purpose other than the generation of business; and post-marketing research used as a pretense to promote product. Prudent manufacturers will develop contracting procedures that clearly separate the awarding of research contracts from marketing or promotion of their products.

In addition, pharmaceutical manufacturers also provide other funding for a wide range of physician educational and research activities. Manufacturers should review educational and research grants to physicians similarly to educational and research grants to purchasers (described above). As with grants to purchasers, the OIG recognizes that many grant-funded activities are legitimate and beneficial. When evaluating educational or research grants provided by manufacturers to physicians, manufacturers should determine if the funding is based, in any way, expressly or implicitly, on the physician's referral of the manufacturer's product. If so, the funding plainly implicates the anti-kickback statute. In addition, the manufacturer should determine whether the funding is for *bona fide* educational or research purposes. Absent unusual circumstances, grants or support for educational activities sponsored and organized by medical professional organizations raise little risk of fraud or abuse, provided that the grant or support is not restricted or conditioned with respect to content or faculty.

Pharmaceutical manufacturers often provide funding to other sponsors of continuing medical education (CME) programs. Manufacturers should take steps to ensure that neither they, nor their representatives, are using these activities to channel improper remuneration to physicians or others in a position to generate business for the manufacturer or to influence or control the content of the program.[11] In addition, manufacturers and sponsors of educational programs should be mindful of the relevant rules and regulations of the Food and Drug Administration. Codes of conduct promulgated by the CME industry may provide a useful starting point for manufacturers when reviewing their CME arrangements.

(3) Relationships with Sales Agents. In large part, a pharmaceutical manufacturer's commitment to an effective fraud and abuse compliance program can be measured by its

commitment to training and monitoring its sales force. A pharmaceutical manufacturer should: (i) Develop a regular and comprehensive training program for its sales force, including refresher and updated training on a regular basis, either in person or through newsletters, memoranda, or the like; (ii) familiarize its sales force with the minimum PhRMA Code standards and other relevant industry standards; (iii) institute and implement corrective action and disciplinary policies applicable to sales agents who engage in improper marketing; (iv) avail itself of the advisory opinion process if it has questions about particular practices used by its sales force; and (v) establish an effective system for tracking, compiling, and reviewing information about sales force activities, including, if appropriate, random spot checking.

In addition, manufacturers should carefully review their compensation arrangements with sales agents. Sales agents, whether employees or independent contractors, are paid to recommend and arrange for the purchase of the items or services they offer for sale on behalf of the pharmaceutical manufacturer they represent. Many arrangements can be structured to fit in the employment or personal services safe harbor. Arrangements that cannot fit into a safe harbor should be carefully reviewed. Among the factors that should be evaluated are:

- The amount of compensation;
- The identity of the sales agent engaged in the marketing or promotional activity (*e.g.*, is the agent a ''white coat'' marketer or otherwise in a position of exceptional influence);
- The sales agent's relationship with his or her audience;
- The nature of the marketing or promotional activity;
- The item or service being promoted or marketed; and
- The composition of the target audience.

Manufacturers should be aware that a compensation arrangement with a sales agent that fits in a safe harbor can still be evidence of a manufacturer's improper intent when evaluating the legality of the manufacturer's relationships with persons in a position to influence business for the manufacturer. For example, if a manufacturer provides sales employees with extraordinary incentive bonuses and expense accounts, there may well be an inference to be drawn that the manufacturer intentionally motivated the sales force to induce sales through lavish entertainment or other remuneration.

c. Drug Samples. The provision of drug samples is a widespread industry practice that can benefit patients, but can also be an area of potential risk to a pharmaceutical manufacturer. The Prescription Drug Marketing Act of 1987 (PDMA) governs the distribution of drug samples and forbids their sale. 21 U.S.C. 353(c)(1). A drug sample is defined to be a unit of the drug ''that is not intended to be sold * * * and is intended to promote the sale of the drug.'' 21 U.S.C. 353(c)(1). Failure to comply with the requirements of PDMA can result in sanctions. In some circumstances, if the samples have monetary value to the recipient (*e.g.,* a physician) and are used to treat federal health care program beneficiaries, the improper use of samples may also trigger liability under other statutes, including the False Claims Act and the anti-kickback statue.

Pharmaceutical manufacturers should closely follow the PDMA requirements (including all documentation requirements). In addition, manufacturers can minimize their risk of liability by: (i) Training their sales force to inform sample recipients in a meaningful manner that samples may not be sold or billed (thus vitiating any monetary value of the sample); (ii) clearly and conspicuously labeling individual samples as units that may not be sold (thus minimizing the ability of recipients to advertently or inadvertently commingle samples with purchased product); and (iii) including on packaging and any documentation related to the samples (such as shipping notices or invoices) a clear and conspicuous notice that the samples are subject to PDMA and may not be sold. Recent government enforcement activity has focused on instances in which drug samples were provided to physicians who, in turn, sold them to the patient or billed them to the federal health care programs on behalf of the patient.

C. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every pharmaceutical manufacturer should designate a compliance officer to serve as the focal point for compliance activities.[12] This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the company and the complexity of the task. If the individual has additional management responsibilities, the pharmaceutical manufacturer should ensure that the individual is able to dedicate adequate and substantive time and attention to the compliance functions. Similarly, if the compliance officer delegates some of the compliance duties, he or she should, nonetheless, remain sufficiently involved to fulfill the compliance oversight function.

Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official with direct access to the company's president or CEO, board of directors, all other senior management, and legal counsel. The compliance officer should have sufficient funding, resources, and staff to perform his or her responsibilities fully. The compliance officer should be able to effectuate change within the organization as necessary or appropriate and to exercise independent judgment. Optimal placement of the compliance officer within the organization will vary according to the particular situation of a manufacturer.[13]

Coordination and communication with other appropriate individuals or business units are the key functions of the compliance officer with regard to planning, implementing or enhancing, and monitoring the compliance program. The compliance officer's primary responsibilities should include:

- Overseeing and monitoring implementation of the compliance program;[14]
- Reporting on a regular basis to the company's board of directors, CEO or president, and compliance committee (if applicable) on compliance matters and assisting these individuals or groups to establish methods to reduce the company's vulnerability to fraud and abuse;
- Periodically revising the compliance program, as appropriate, to respond to changes in the company's needs and applicable federal health care program requirements, identified weakness in the compliance program, or identified systemic patterns of noncompliance;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeking to ensure that all affected employees and management understand and comply with pertinent federal and state standards;
- Ensuring that independent contractors and agents, particularly those agents and contractors who are involved in sales and marketing activities, are aware of the requirements of the company's compliance program with respect to sales and marketing activities, among other things;
- Coordinating personnel issues with the company's Human Resources/

Personnel office (or its equivalent) to ensure that the List of Excluded Individuals/Entities [15] has been checked with respect to all employees and independent contractors;

- Assisting the company's internal auditors in coordinating internal compliance review and monitoring activities;
- Reviewing and, where appropriate, acting in response to reports of noncompliance received through the hotline (or other established reporting mechanism) or otherwise brought to his or her attention (*e.g.*, as a result of an internal audit or by corporate counsel who may have been notified of a potential instance of noncompliance);
- Independently investigating and acting on matters related to compliance. To that end, the compliance officer should have the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action (*e.g.*, making necessary improvements to policies and practices, and taking appropriate disciplinary action) with various company divisions or departments;
- Participating with the company's counsel in the appropriate reporting of any self-discovered violations of federal health care program requirements; and
- Continuing the momentum and, as appropriate, revision or expansion of the compliance program after the initial years of implementation.[16]

The compliance officer must have the authority to review all documents and other information relevant to compliance activities. This review authority should enable the compliance officer to examine interactions with government programs to determine whether the company is in compliance with federal health care program reporting and rebate requirements and to examine interactions with health care professionals that could violate kickback prohibitions or other federal health care programs requirements. Where appropriate, the compliance officer should seek the advice of competent legal counsel about these matters.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[17] When developing an appropriate team of people to serve as the pharmaceutical manufacturer's compliance committee, the company should consider a variety of skills and personality traits that are expected from the team members. The company should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of company employees. These interpersonal skills are as important as the professional experience of the compliance officer and each member of the compliance committee.

Once a pharmaceutical manufacturer chooses the people who will accept the responsibilities vested in members of the compliance committee, the company needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties. The OIG recognizes that some pharmaceutical manufacturers (*e.g.*, small companies or those with limited budgets) may not have the resources or the need to establish a compliance committee. However, when potential problems are identified at such companies, the OIG recommends the creation of a ''task force'' to address the particular issues. The members of the task force may vary depending upon the area of concern. For example, if the compliance officer identifies issues relating to improper inducements to the company's purchasers or prescribers, the OIG recommends that a task force be organized to review the arrangements and interactions with those purchasers or prescribers. In essence, the compliance committee is an extension of the compliance officer and provides the organization with increased oversight.

D. Conducting Effective Training and Education

The proper education and training of officers, directors, employees, contractors, and agents, and periodic retraining of personnel at all levels are critical elements of an effective compliance program. A pharmaceutical manufacturer must take steps to communicate effectively its standards and procedures to all affected personnel by requiring participation in appropriate training programs and by other means, such as disseminating publications that explain specific requirements in a practical manner. These training programs should include general sessions summarizing the manufacturer's compliance program, written standards, and applicable federal health care program requirements. All employees and, where feasible and appropriate, contractors should receive the general training. More specific training on issues, such as (i) the anti-kickback statute and how it applies to pharmaceutical sales and marketing practices and (ii) the calculation and reporting of pricing information and payment of rebates in connection with federal health care programs, should be targeted at those employees and contractors whose job requirements make the information relevant. The specific training should be tailored to make it as meaningful as possible for each group of participants.

Managers and employees of specific divisions can assist in identifying specialized areas that require training and in carrying out such training. Additional areas for training may also be identified through internal audits and monitoring and from a review of any past compliance problems of the pharmaceutical manufacturer or similarly situated companies. A pharmaceutical manufacturer should regularly review its training and, where appropriate, update the training to reflect issues identified through audits or monitoring and any relevant changes in federal health care program requirements. Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and sufficiently experienced in the issues presented to adequately field questions and coordinate discussions among those being trained. Ideally, training instructors should be available for follow-up questions after the formal training session has been conducted.

The pharmaceutical manufacturer should train new employees soon after they have started working. Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance officer should document any formal training undertaken by the company as part of the compliance program. The company should retain adequate records of its training of employees, including attendance logs, descriptions of the training sessions, and copies of the material distributed at training sessions.

The OIG suggests that all relevant personnel (*i.e.*, employees as well as agents of the pharmaceutical manufacturer) participate in the various educational and training programs of the company. For example, for sales representatives who are responsible for the sale and marketing of the company's products, periodic training in the anti-kickback statute and its safe harbors should be required. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.

The OIG recognizes that the format of the training program will vary depending upon the size and resources of the pharmaceutical manufacturer. For example, a company with limited resources or whose sales force is widely dispersed may want to create a videotape or computer-based program for each type of training session so new employees and employees outside of central locations can receive training in a timely manner. If videos or computer-based programs are used for compliance training, the OIG suggests that the company make a qualified individual available to field questions from trainees. Also, large pharmaceutical manufacturers may find training via the Internet or video conference capabilities to be a cost-effective means of reaching a large number of employees. Alternatively, large companies may include training sessions as part of regularly scheduled regional meetings.

The OIG recommends that participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action. Adherence to the training requirements as well as other provisions of the compliance program should be a factor in the annual evaluation of each employee.

E. Developing Effective Lines of Communication

1. Access to Supervisors and/or the Compliance Officer

In order for a compliance program to work, employees must be able to ask questions and report problems. Supervisors play a key role in responding to employee concerns and it is appropriate that they serve as a first line of communications. Pharmaceutical manufacturers should consider the adoption of open-door policies in order to foster dialogue between management and employees. In order to encourage communications, confidentiality and non-retaliation policies should also be developed and distributed to all employees.[18]

Open lines of communication between the compliance officer and employees are equally important to the successful implementation of a compliance program and the reduction of any potential for fraud and abuse. In addition to serving as a contact point for reporting problems and initiating appropriate responsive action, the compliance officer should be viewed as someone to whom personnel can go to get clarification on the company's policies. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that compliance standards or polices can be updated and improved to reflect any necessary changes or clarifications. Pharmaceutical manufacturers may also consider rewarding employees for appropriate use of established reporting systems as a way to encourage the use of such systems.

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines, e-mails, newsletters, suggestion boxes, and other forms of information exchange to maintain open lines of communication. In addition, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of company policy and procedures. Pharmaceutical manufacturers may also identify areas of risk or concern through periodic surveys or communications with sales representatives about the current marketing environment. This could provide management with insight about and an opportunity to address conduct occurring in the field, either by the company's own sale representatives or those of other companies.

If a pharmaceutical manufacturer establishes a hotline or other reporting mechanism, information regarding how to access the reporting mechanism should be made readily available to all employees and independent contractors by including that information in the code of conduct or by circulating the information (*e.g.*, by publishing the hotline number or e-mail address on wallet cards) or conspicuously posting the information in common work areas. Employees should be permitted to report matters on an anonymous basis.

Reported matters that suggest substantial violations of compliance policies or applicable Federal health care program requirements should be documented and investigated promptly to determine their veracity and the scope and cause of any underlying problem. The compliance officer should maintain a detailed log that records such reports, including the nature of any investigation, its results, and any remedial or disciplinary action taken. Such information, redacted of individual identifiers, should be summarized and included in reports to the board of directors, the president or CEO, and compliance committee. Although the pharmaceutical manufacturer should always strive to maintain the confidentiality of an employee's identity, it should also make clear that there might be a point where the individual's identity may become known or need to be revealed in certain instances. The OIG recognizes that protecting anonymity may be infeasible for small companies. However, the OIG believes all employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn for a meaningful response and should be able to do so without fear of retribution.

F. Auditing and Monitoring

An effective compliance program should incorporate thorough monitoring of its implementation and an ongoing evaluation process. The compliance officer should document this ongoing monitoring, including reports of suspected noncompliance, and provide these assessments to company's senior management and the compliance committee. The extent and frequency of the compliance audits may vary depending on variables such as the pharmaceutical manufacturer's available resources, prior history of noncompliance, and the risk factors particular to the company. The nature of the reviews may also vary and could include a prospective systemic review of the manufacturer's processes, protocols, and practices or a retrospective review of actual practices in a particular area.

Although many assessment techniques are available, it is often effective to have internal or external evaluators who have relevant expertise perform regular compliance reviews. The reviews should focus on those divisions or departments of the pharmaceutical manufacturer that have substantive involvement with or impact on federal health care programs (such as the government contracts and sales and marketing divisions) and on the risk areas identified in this guidance. The reviews should also evaluate the company's policies and procedures regarding other areas of concern identified by the OIG (*e.g.*, through Special Fraud Alerts) and federal and state law enforcement agencies. Specifically, the reviews should evaluate whether the: (1) Pharmaceutical manufacturer has policies covering the identified risk areas; (2) policies were implemented and communicated; and (3) policies were followed.

G. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

An effective compliance program should include clear and specific disciplinary policies that set out the consequences of violating the law or the pharmaceutical manufacturer's code of

conduct or policies and procedures. A pharmaceutical manufacturer should consistently undertake appropriate disciplinary action across the company in order for the disciplinary policy to have the required deterrent effect. Intentional and material noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination or other sanctions, as appropriate. Disciplinary action also may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Each situation must be considered on a case-by-case basis, taking into account all relevant factors, to determine the appropriate response.

H. Responding to Detected Problems and Developing Corrective Action Initiatives

Violation of a pharmaceutical manufacturer's compliance program, failure to comply with applicable federal or state law, and other types of misconduct threaten the company's status as a reliable, honest, and trustworthy participant in the health care industry. Detected but uncorrected misconduct can endanger the reputation and legal status of the company. Consequently, upon receipt of reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the allegations to determine whether a material violation of applicable law or the requirements of the compliance program has occurred and, if so, take decisive steps to correct the problem.[19] The exact nature and level of thoroughness of the investigation will vary according to the circumstances, but the review should be detailed enough to identify the root cause of the problem. As appropriate, the investigation may include a corrective action plan, a report and repayment to the government, and/or a referral to criminal and/or civil law enforcement authorities.

Reporting

Where the compliance officer, compliance committee, or a member of senior management discovers credible evidence of misconduct from any source and, after a reasonable inquiry, believes that the misconduct may violate criminal, civil, or administrative law, the company should promptly report the existence of misconduct to the appropriate federal and state authorities[20] within a reasonable period, but not more than 60 days,[21] after determining that there is credible evidence of a violation.[22] Prompt voluntary reporting will demonstrate the pharmaceutical manufacturer's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion), if the reporting company becomes the subject of an OIG investigation.[23]

When reporting to the government, a pharmaceutical manufacturer should provide all information relevant to the alleged violation of applicable federal or state law(s) and the potential financial or other impact of the alleged violation. The compliance officer, under advice of counsel and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, and especially if the investigation ultimately reveals that criminal, civil or administrative violations have occurred, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable federal health care programs or their beneficiaries.

III. Conclusion

In today's environment of increased scrutiny of corporate conduct and increasingly large expenditures for prescription drugs, it is imperative for pharmaceutical manufacturers to establish and maintain effective compliance programs. These programs should foster a culture of compliance that begins at the executive level and permeates throughout the organization. This compliance guidance is designed to provide assistance to all pharmaceutical manufacturers as they either implement compliance programs or re-assess existing programs. The essential elements outlined in this compliance guidance can be adapted to the unique environment of each manufacturer. It is the hope and expectation of the OIG that the resulting compliance programs will benefit not only federal health care programs and their beneficiaries, but also pharmaceutical manufacturers themselves.

Dated: April 23, 2003.

Janet Rehnquist,

Inspector General.

Endnotes

1. The term ''Federal health care programs,'' as defined in 42 U.S.C. 1320a–7b(f), includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States government or any state health plan (*e.g.*, Medicaid or a program receiving funds from block grants for social services or child health services). In this document, the term ''federal health care program requirements'' refers to the statutes, regulations and other rules governing Medicare, Medicaid, and all other federal health care programs.

2. *See* 66 FR 31246 (June 11, 2001), ''Notice for Solicitation of Information and Recommendations for Developing a Compliance Program Guidance for the Pharmaceutical Industry.''

3. *See* 67 FR 62057 (October 3, 2002), ''Draft OIG Compliance Program Guidance for Pharmaceutical Manufacturers.''

4. 42 U.S.C. 1320a–7b(b).

5. In addition, the compliance program elements and potential risk areas addressed in this compliance program guidance may also have application to manufacturers of other products that may be reimbursed by federal health care programs, such as medical devices and infant nutritional products.

6. In addition, pharmaceutical manufacturers should be mindful that many states have fraud and abuse statutes—including false claims, anti-kickback and other statutes—that are not addressed in this guidance.

7. The False Claims Act (31 U.S.C. 3729–33) prohibits knowingly presenting (or causing to be presented) to the federal government a false or fraudulent claim for payment or approval. Additionally, it prohibits knowingly making or using (or causing to be made or used) a false record or statement to get a false or fraudulent claim paid or approved by the federal government or its agents, like a carrier, other claims processor, or state Medicaid program.

8. The 340B Program, contained as part of the Public Health Services Act and codified at 42 U.S.C. 256b, is administered by the Health Resources and Services Administration (HRSA).

9. 42 U.S.C. 1396r–8. Average Manufacturer Price and Best Price are defined in the statute at 42 U.S.C. 1396r–8(k)(1) and 1396r–8(c)(1), respectively. CMS has provided further guidance on these terms in the National Drug Rebate Agreement and in Medicaid Program Releases available through its Web site at *http://www.hcfa.gov/medicaid/drugs/drug.mpg.htm.*

10. In this regard, pharmaceutical manufacturers should note that the exception for non-monetary compensation under the Stark law (42 U.S.C. 1395nn; 42 CFR 411.357(k)) is not a basis for protection under the anti-kickback statute.

11. CME programs with no industry sponsorship, financing, or affiliation should not raise anti-kickback concerns, although tuition payments by manufacturers (or their representatives) for persons in a position to influence referrals (*e.g.*, physicians or medical students) may raise concerns.

12. It is also advisable to designate as a compliance officer an individual with prior experience or knowledge of compliance and

operational issues relevant to pharmaceutical manufacturers.

13. The OIG believes it is generally not advisable for the compliance function to be subordinate to the pharmaceutical manufacturer's general counsel, or comptroller or similar financial officer. Separation of the compliance function helps to ensure independent and objective legal reviews and financial analysis of the company's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the pharmaceutical manufacturer make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

14. For companies with multiple divisions or regional offices, the OIG encourages coordination with each company location through the use of a compliance officer located in corporate headquarters who is able to communicate with parallel compliance liaisons in each division or regional office, as appropriate.

15. As part of its commitment to compliance, a pharmaceutical manufacturer should carefully consider whether to hire or do business with individuals or entities that have been sanctioned by the OIG. The List of Excluded Individuals and Entities can be checked electronically and is accessible through the OIG's Web site at: *http://oig.hhs.gov.*

16. There are many approaches the compliance officer may enlist to maintain the vitality of the compliance program. Periodic on-site visits of regional operations, bulletins with compliance updates and reminders, distribution of audiotapes, videotapes, CD ROMs, or computer notifications about different risk areas, lectures at management and employee meetings, and circulation of recent articles or publications discussing fraud and abuse are some examples of approaches the compliance officer may employ.

17. The compliance committee benefits from having the perspectives of individuals with varying responsibilities and areas of knowledge in the organization, such as operations, finance, audit, human resources, legal, and sales and marketing, as well as employees and managers of key operating units. The compliance officer should be an integral member of the committee. All committee members should have the requisite seniority and comprehensive experience within their respective departments to recommend and implement any necessary changes to policies and procedures.

18. In some cases, employees sue their employers under the False Claims Act's *qui tam* provisions after a failure or apparent failure by the company to take action when the employee brought a questionable, fraudulent, or abusive situation to the attention of senior corporate officials. Whistleblowers must be protected against retaliation, a concept embodied in the provisions of the False Claims Act. *See* 31 U.S.C. 3730(h).

19. Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a *monetary* loss to a federal health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss, but corrective actions are still necessary to protect the integrity of the health care program.

20. Appropriate federal and state authorities include the OIG, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Food and Drug Administration, the Federal Trade Commission, the Drug Enforcement Administration and the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected federal or state health care programs, such as the state Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, HRSA, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

21. In contrast, to qualify for the ''not less than double damages'' provision of the False Claims Act, the provider must provide the report to the government within 30 days after the date when the provider first obtained the information. 31 U.S.C. 3729(a).

22. Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, the OIG believes a provider should report misconduct that: (1) Is a clear violation of administrative, civil, or criminal laws; (2) has a significant adverse effect on the quality of care provided to federal health care program beneficiaries; or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on federal health care programs.

23. The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude an individual or entity from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997).

[FR Doc. 03–10949 Filed 5–2–03; 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: 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.

National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase Three—(OMB No. 0930–0209, revision)—SAMHSA's Center for Mental Health Services is conducting Phase III of the national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program. Phase III collects data on child mental health outcomes, family life, and service system development and performance. Data are being collected on 22 funded systems of care, and approximately 5,100 children and families. Data collection for this evaluation will be conducted over a 5½-year period.

The core of service system data are currently collected every 18 months throughout the evaluation period. Service delivery and system variables of interest include the following: Maturity of system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation.

Child and family outcomes of interest will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: Child symptomatology and functioning, family functioning, material resources, and caregiver strain. In addition, a treatment effectiveness study will examine the relative impact of an evidence-based treatment within one system of care.

The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

This revision to the currently approved information collection activities involves: (1) Extension of the data collection period for an additional 18 months to cover an additional sixth year of grant funding in the 22 currently funded systems of care (and a six-month no-cost extension for the evaluation), (2) the addition of a family-driven study to assess the extent of family involvement in service planning, (3) the elimination of the longitudinal comparison study and the addition of a treatment effectiveness study in two sites

including assessment of outcomes, treatment fidelity and inteaction of the treatment with the larger system of care, (4) the addition of a sustainability study to assess the capacity of funded communities to continue system of care service provision after the termination of grant funding, (5) the addition of a wraparound fidelity study to assess the implementation of wraparound services delivery in the context of a system of care. Although the data collection period is being extended for an additional 18 months, the total average annual burden is reduced because the total number of responses for each individual remains the same.

Respondent	Number of respondents	Number of responses/ respondent	Average burden/response	Total average annual burden
	Currently approved			[1]20,046
Caregiver	5,107	1.00	2.16	11,031
Youth	3,064	1.01	0.84	2,600
Provider	462	0.54	1.53	382
New total				14,012

[1]Annual burden.

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: April 29, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–10981 Filed 5–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2269–03]

RIN 1615–AA04

Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Honduras under the Temporary Protected Status (TPS) Program will expire on July 5, 2003. This notice extends the Secretary of Homeland Security's designation of Honduras for 18 months until January 5, 2005, and sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 18-month period. Re-registration is limited to persons who registered under the initial designation (which ended on August 20, 1999) and also timely re-registered under the extensions of designation. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

Given the large number of Hondurans affected by this notice, the Department of Homeland Security (DHS) recognizes that many re-registrants will not receive their new Employment Authorization Documents (EADs) until after their current EADs expire on July 5, 2003. Accordingly, this notice automatically extends, until December 5, 2003, the validity of EADs issued pursuant to the Honduras TPS program, and explains how TPS beneficiaries or their employers may determine which EADs are automatically extended.

EFFECTIVE DATES: The extension of Honduras's TPS designation is effective July 5, 2003, and will remain in effect until January 5, 2005. The 60-day re-registration period begins May 5, 2003 and will remain in effect until July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Naheed Qureshi, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 ''I'' Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of Honduras Under the TPS Program?

On March 1, 2003, the Immigration and Naturalization Service (INS) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering the TPS program were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. (8 U.S.C. 1254a(b)(3)(A)). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act (8 U.S.C. 1254a(b)(3)(B)). Finally, if the Secretary of DHS does not make the required determination prior to the 60-day period prescribed by statute, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the

discretion of the Secretary of DHS, a period of 12 or 18 months) (8 U.S.C. 1254a(b)(3)(C)).

Why Did the Attorney General Designate Honduras for TPS?

On January 5, 1999, the Attorney General designated Honduras under the TPS program for a period of 18 months based on the severe flooding and mudslides caused by Hurricane Mitch (64 FR 524). The fierce storm that swept through the country killed more than 5,000 people, left 440,000 people homeless, and washed away roads, bridges, schools, and hospitals (*See* BCIS Resource Information Center Report (April 2000)). Following the initial designation, the Departments of Justice (DOJ) and State (DOS) kept a close watch over the progress of reconstruction in Honduras.. Given the amount of reconstruction necessary, the Attorney General extended the Honduras TPS designation three times, on May 11, 2000, (65 FR 30438), May 8, 2001, (66 FR 23269), and May 3, 2002 (67 FR 22451). Each decision to extend the TPS designation was made on the determination that the conditions that warranted TPS designation initially continued to exist.

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Honduras?

After the extension of Honduras' TPS designation on May 3, 2002, DHS and DOS have continued to monitor the conditions in that country. Prior to making his decision to extend the Honduras TPS designation, the Secretary of DHS consulted with relevant government agencies to determine whether conditions warranting the TPS designation continue to exist in Honduras. Although there has been significant progress in reconstruction efforts, recent droughts as well as flooding from Hurricane Michelle in 2001 have added to the humanitarian, economic, and social problems initially brought on by Hurricane Mitch in 1998. The slow recovery continues to make the country unable, temporarily, to handle the return of approximately 87,000 nationals with TPS at this time.

This assessment is consistent with the Department of State report finding that although a significant amount of reconstruction has been completed since Hurricane Mitch, Honduras is, ''seriously affected by a drought and Hurricane Michelle in 2001 causing further destruction and emergency conditions' and ''much remains to be done'' (Department of State Recommendation, March 25, 2003 (DOS Report)). Such repeated environmental catastrophes have interrupted Honduras' ability to recover from Hurricane Mitch and, as a result, the country continues to lack the needed stability and infrastructure to support the return of its nationals. The BCIS Resource Information Center confirms that a prolonged drought as well as flooding from Hurricane Michelle have compromised food security and disrupted reconstruction efforts (RIC Report 2003). Recent reports indicate that 38% of Hondurans suffer from long-term ''chronic'' malnutrition. *Id.* Furthermore, completion of water and sanitation projects has been delayed; the Government of Honduras reports than over 500 projects have not yet begun (DOS Report).

In addition to the environmental setbacks, Honduras' reconstruction efforts have been hindered by delays in disbursements of aid needed to rebuild. As of June 2002, the European Union had provided less than 10% of its promised funding and less than 30% of all multilateral donations had been received and projects being funded by a number of non-U.S. donors are still underway. *Id.* For example, considerable work to repair damaged buildings and to construct new schools for relocated communities (RIC Report 2003). Furthermore, smaller roads and other transportation infrastructure have, generally, not undergone repair. *Id.* These setbacks, in addition to problems caused by the subsequent flooding and droughts, render Honduras unable to handle adequately the return of its nationals. Consequently, the conditions under which Honduras was designated for TPS still exist.

Based on this review, the Secretary of DHS, after consultation with appropriate Government agencies, finds that the conditions that prompted designation of Honduras under the TPS program continue to be met (8 U.S.C.1254a(b)(3)(C)). There continues to be a substantial, but temporary, disruption of living conditions in Honduras as the result of an environmental disaster, and Honduras continues to be unable, temporarily, to handle adequately the return of its nationals (8 U.S.C. 1254a(b)(1)(B)(i)–(ii)). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Honduras should be extended for an additional 18-month period.

If I Currently Have TPS Through the Honduras TPS Program, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Honduras TPS program, your benefits will expire on July 5, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through July 5, 2004. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof (8 U.S.C. 1254a(a)(1)).

If My Initial Honduras TPS Application Is Pending, Do I Still Re-Register for TPS?

Yes. If your initial TPS application is still pending approval, you must re-register for TPS during the re-registration period in order to be eligible for this extension. See the following re-registration instructions.

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Honduras program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). Applications submitted without the required fee and/or photos will be rejected. See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the BCIS service center having jurisdiction over your place of residence during the 60-day re-registration period that begins May 5, 2003 and ends July 7, 2003 (inclusive of such end date).

If—	Then—
You are applying for employment authorization until January 5, 2005 ...	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit, and vise versa. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS (8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i)).

Does This Extension Allow Nationals of Honduras (or Aliens Having No Nationality Who Last Habitually Resided in Honduras) Who Entered the United States After December 30, 1998, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Honduras under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) must have resided continuously in the United States since December 30, 1998, and have been continuously physically present in the United States since January 5, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Honduras (or alien who has no nationality and who last habitually resided in Honduras);

(2) Have been continuously physically present in the United States since January 5, 1999;

(3) Have continuously resided in the United States since December 30, 1998; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from January 5, 1999, through August 20, 1999, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above (8 CFR 244.2(g)).

Why Is the Secretary of DHS Automatically Extending the Validity of EADs From July 5, 2003, to December 5, 2003?

The Secretary of DHS has decided to extend automatically the validity of EADs to prevent a lapse in employment authorization documentation for qualified re-registrants during the time that re-registration applications are processed. Given the large number of Honduran TPS class members who are eligible for re-registration, re-registrants may receive their new EADs only after their current EADs have expired. To prevent a gap in employment authorization documentation for qualified re-registrants, the Secretary of DHS is extending automatically the validity of the applicable EADs for a period of 5 months, to December 5, 2003 (8 U.S.C. 1254a(a)(2); 1254a(d)(1)–(2)).

Who Is Eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who has applied for and received an EAD under the initial TPS designation for Honduras. This automatic extension is limited to EADs bearing an expiration date of July 5, 2003, and the notation: ''A–12'' or ''C–19'' on the face of the card under ''Category'' for EADs issued on Form I–766 or ''274A.12(A)(12)'' or ''274A.12(C)(19)'' on the face of the card under ''Provision of Law'' for EADs issued on Form I–688B.

TPS applicants who have not yet received their initial or provisional EAD, including those who apply after the date of this notice but before the re-registration period closes on July 5, 2003, may receive an EAD that facially expires on July 5, 2003. Such an EAD is covered by the automatic extension described above.

Must Qualified Individuals Apply for the Automatic Extension of Their TPS-Related EADs?

No, qualified individuals do not have to apply for this automatic employment authorization extension to December 5, 2003. However, qualified individuals must re-register for TPS during the re-registration period that begins on May 5, 2003, and continues through, July 7, 2003, in order to be eligible for a new EAD that is valid until January 5, 2005.

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of employment authorization by virtue of this **Federal Register** notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until December 5, 2003. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic

extension of employment authorization documentation to December 5, 2003. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Which EADs That Have Been Automatically Extended Through December 5, 2003, Are Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 5, 2003, employers of Honduras TPS class members whose employment authorization has been automatically extended by this notice must accept an EAD that contains an expiration date of July 5, 2003, and that bears one of the following notations: ''A–12'' or ''C–19'' on the face of the card under ''Category'' for EADs issued on Form I–766; or, ''274A.12(A)(12)'' or ''274A.12(c)(19)'' on the face of the card under ''Provision of Law'' for EADs issued on Form I–688B. New EADs or extension stickers showing the December 5, 2003, expiration date will not be issued.

Employers should not request proof of Honduran citizenship. Employers presented with an EAD that this **Federal Register** notice has extended automatically, that appears to be genuine and that relates to the employee should accept the document as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of the DHS through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the BCIS' Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a BCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155, or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688, or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

What Happens When This Extension of TPS Expires on January 5, 2005?

At least 60 days before this extension of TPS expires on January 5, 2005, the Secretary of DHS will review conditions in Honduras and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Honduras Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Honduras for TPS continue to be met (8 U.S.C. 1254a(b)(3)(A)). Accordingly, I order as follows:

(1) The designation of Honduras under section 244(b) of the Act is extended for an additional 18-month period from July 5, 2003, to January 5, 2005 (8 U.S.C. 1254a(b)(3)(C)).

(2) There are approximately 87,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who received TPS during the initial designation period must re-register for TPS during the 60-day re-registration period from May 5, 2003 until July 7, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be rejected. There is no fee for filing a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS (8 CFR 244.17(c)). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on January 5, 2005, the Secretary will review the designation of Honduras under the TPS program and determine whether the conditions for designation continue to be met (8 U.S.C. 1254a(b)(3)(A)). Notice of that determination, including the basis for the determination, will be published in the **Federal Register** (8 U.S.C. 1254a(b)(3)(A)).

(6) TPS-related Employment Authorization Documents that expire on July 5, 2003, are extended automatically until December 5, 2003, for qualified Hondurans.

(7) Information concerning the extension of designation of Honduras under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.immigration.gov/graphics/index.htm.*

Dated: April 29, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–10961 Filed 4–30–03; 10:31 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2270–03]

RIN 1615–AA04

Extension of the Designation of Nicaragua Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Nicaraguans

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Nicaragua under the Temporary Protected Status (TPS) Program will expire on July 5, 2003. This notice extends the Secretary of Homeland Security's designation of Nicaragua for 18 months until January 5, 2005, and sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 18-month period. Re-registration is limited to persons who registered under the initial designation (which ended on August 20, 1999) and also timely re-registered under the extensions of designation. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

Given the large number of Nicaraguans affected by this notice, the Department of Homeland Security (DHS) recognizes that many re-registrants will not receive their new Employment Authorization Documents (EADs) until after their current EADs expire on July 5, 2003. Accordingly, this notice automatically extends, until December 5, 2003, the validity of EADs issued pursuant to the Nicaragua TPS program, and explains how TPS beneficiaries or their employers may determine which EADs are automatically extended.

EFFECTIVE DATES: The extension of Nicaragua's TPS designation is effective July 5, 2003, and will remain in effect until January 5, 2005. The 60-day re-registration period begins May 5, 2003 and will remain in effect until July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Naheed Qureshi, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 ''I'' Street, NW, Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of Nicaragua Under the TPS Program?

On March 1, 2003, the Immigration and Naturalization Service (INS) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering the TPS program were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. (8 U.S.C. 1254a(b)(3)(A)). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act (8 U.S.C. 1254a(b)(3)(B)). Finally, if the Secretary of DHS does not make the required determination prior to the 60-day period prescribed by statute, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months) (8 U.S.C. 1254a(b)(3)(C)).

Why Did the Attorney General Designate Honduras for TPS?

On January 5, 1999, the Attorney General designated Nicaragua under the TPS program for a period of 18 months based on the severe flooding and mudslides caused by Hurricane Mitch (64 FR 524). The fierce storm that swept through the country killed more than 3,000 people, left 150,000 people homeless, and washed away roads, bridges, schools, and hospitals (See BCIS Resource Information Center Report (April 2000)). Following the initial designation, the Departments of Justice (DOJ) and State (DOS) kept a close watch over the progress of reconstruction in Nicaragua and consulted with relevant government agencies regularly. Given the amount of reconstruction necessary, the Attorney General extended the Nicaragua TPS designation three times, on May 11, 2000, (65 FR 30440), May 8, 2001, (66 FR 23271), and May 3, 2002, (67 FR 22454). Each decision to extend the TPS designation was made on the determination that the conditions that warranted the TPS designation initially continued to exist.

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Nicaragua?

After the extension of Nicaragua's TPS designation on May 3, 2002, the DHS and DOS have continued to monitor the conditions in that country. Prior to making his decision to extend the Nicaragua TPS designation, the Secretary consulted with relevant government agencies to determine whether conditions warranting the TPS designation continue to exist in Nicaragua. Although there are strong indications of progress in recovery efforts, recent droughts as well as flooding from Hurricane Michelle in 2001 have added to the humanitarian, economic, and social problems initially brought on by Hurricane Mitch in 1998, making the country unable, temporarily, to handle the return of approximately 6,000 nationals with TPS at this time.

This assessment is consistent with a recent Department of State report finding that although a significant amount of reconstruction has been completed since Hurricane Mitch, Nicaragua is, ''seriously affected by a drought and Hurricane Michelle in 2001 causing further destruction and emergency conditions,'' and ''much remains to be done.'' Department of State Recommendation, March 25, 2003 (DOS Report). Such repeated environmental catastrophes have interrupted Nicaragua's ability to recover from Hurricane Mitch and, as a result, the country continues to lack the needed stability and infrastructure to support the return of its nationals. The BCIS Resource Information Center confirmed that a prolonged drought as well as flooding from Hurricane Michelle have compromised food security and disrupted reconstruction efforts. (RIC Report 2003.) Additionally, the Department of State reports that while significant reconstruction has

occurred, Nicaragua's reconstruction efforts have been hindered by delays in disbursements of aid needed to rebuild. (DOS Report.) Many of the European Union projects began only within the last year. *Id.* This delay in acquiring foreign aid prevented rapid completion of reconstruction. Hurricane Michelle and the drought exacerbated the situation. Consequently, the conditions under which Nicaragua was designated for TPS have not ceased to exist, and therefore, Nicaragua remains temporarily unable to handle adequately the return of its nationals.

Based on this review, the Secretary of DHS finds that the conditions that prompted designation of Nicaragua under the TPS program continue to be met (8 U.S.C.1254a(b)(3)(C)). There continues to be a substantial, but temporary, disruption of living conditions in Nicaragua as the result of an environmental disaster, and Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals (8 U.S.C. 1254a(b)(1)(B)(i)–(ii)). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Nicaragua should be extended for an additional 18-month period.

If I Currently Have TPS Through the Nicaragua TPS Program, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Nicaragua TPS program, your benefits will expire on July 5, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through January 5, 2005. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof (8 U.S.C. 1254a(a)(1)).

If My Initial Nicaragua TPS Application Is Pending, Do I Still Re-Register for TPS?

Yes. If your initial TPS application is still pending approval, you must re-register for TPS during the re-registration period in order to be eligible for this extension. See the following re-registration instructions.

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Nicaragua program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). Applications submitted without the required fee and/or photos will be rejected. See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the BCIS service center having jurisdiction over your place of residence during the 60-day re-registration period that begins May 5, 2003 and ends July 1, 2003 (inclusive of such end date).

If—	Then—
You are applying for employment authorization until January 5, 2005.	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit, and vice versa. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS (8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i)).

Does This Extension Allow Nationals of Nicaragua (or Aliens Having No Nationality Who Last Habitually Resided in Nicaragua) Who Entered the United States After December 30, 1998, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Nicaragua under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) must have resided continuously in the United States since December 30, 1998, and have been continuously physically present in the United States since January 5, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Nicaragua (or alien who has no nationality and who last habitually resided in Nicaragua);

(2) Have been continuously physically present in the United States since January 5, 1999;

(3) Have continuously resided in the United States since December 30, 1998; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from January 5, 1999, through August 20, 1999, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above (8 CFR 244.2(g)).

Why Is the Secretary of DHS Automatically Extending the Validity of EADs From July 5, 2003, to December 5, 2003?

The Secretary of DHS has decided to extend automatically the validity of EADs to prevent a lapse in employment authorization documentation for qualified re-registrants during the time that re-registration applications are processed. Given the large number of Nicaraguan TPS class members who are eligible for re-registration, re-registrants would receive their new EADs only after their current EADs have expired. To prevent a gap in employment authorization documentation for qualified re-registrants, the Secretary of DHS is extending automatically the validity of the applicable EADs for a period of 5 months, to December 5, 2003 (8 U.S.C. 1254a(a)(2); 1254a(d)(1)–(2)).

Who Is Eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who has applied for and received an EAD under the initial TPS designation for Nicaragua. This automatic extension is limited to EADs bearing an expiration date of July 5, 2003, and the notation: ''A–12'' or ''C–19'' on the face of the card under ''Category'' for EADs issued on Form I–766 or ''274A.12(A)(12)'' or ''274A.12(C)(19)'' on the face of the card under ''Provision of Law'' for EADs issued on Form I–688B.

TPS applicants who have not yet received their initial or provisional EAD, including those who apply after the date of this notice but before the re-registration period closes on July 5, 2003, may receive an EAD that facially expires on July 5, 2003. Such an EAD is covered by the automatic extension described above.

Must Qualified Individuals Apply for the Automatic Extension of Their TPS-Related EADs?

No, qualified individuals do not have to apply for this automatic employment authorization extension to December 5, 2003. However, qualified individuals must re-register for TPS during the re-registration period that begins on May 5, 2003, and continues through, July 7, 2003, in order to be eligible for a new EAD that is valid until January 5, 2005.

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of employment authorization by virtue of this **Federal Register** notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until December 5, 2003. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic extension of employment authorization documentation to December 5, 2003. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Which EADs That Have Been Automatically Extended Through December 5, 2003, Are Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 5, 2003, employers of Nicaragua TPS class members whose employment authorization has been automatically extended by this notice must accept an EAD that contains an expiration date of July 5, 2003, and that bears one of the following notations: ''A–12'' or ''C–19'' on the face of the card under ''Category'' for EADs issued on Form I–766; or, ''274A.12(A)(12)'' or ''274A.12(c)(19)'' on the face of the card under ''Provision of Law'' for EADs issued on Form I–688B. New EADs or extension stickers showing the December 5, 2003, expiration date will not be issued.

Employers should not request proof of Nicaraguan citizenship. Employers presented with an EAD that this **Federal Register** notice has extended automatically, that appears to be genuine and that relates to the employee should accept the document as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of the DHS through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the BCIS' Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a BCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155, or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688, or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

What Happens When This Extension of TPS Expires on January 5, 2005?

At least 60 days before this extension of TPS expires on January 5, 2005, the Secretary of DHS will review conditions in Nicaragua and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Nicaragua under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Nicaragua for TPS continue to be met (8 U.S.C. 1254a(b)(3)(A)). Accordingly, I order as follows:

(1) The designation of Nicaragua under section 244(b) of the Act is extended for an additional 18-month period from July 5, 2003, to January 5, 2005 (8 U.S.C. 1254a(b)(3)(C)).

(2) There are approximately 6,000 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who received TPS during the initial designation period must re-register for TPS during the 60-day re-registration period from May 5, 2003 until July 7, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be rejected. There is no fee for filing a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS (8 CFR 244.17(c)). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on January 5, 2005, the Attorney General will review the designation of Nicaragua under the TPS program and determine whether the conditions for designation continue to be met (8 U.S.C. 1254a(b)(3)(A)). Notice of that determination, including the basis for the determination, will be published in the **Federal Register** (8 U.S.C. 1254a(b)(3)(A)).

(6) TPS-related Employment Authorization Documents that expire on July 5, 2003, are extended automatically until December 5, 2003, for qualified Nicaraguans.

(7) Information concerning the extension of designation of Nicaragua under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.immigration.gov/graphics/index.htm.*

Dated: April 29, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–10962 Filed 4–30–03; 10:31 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14814]

Great Lakes Pilotage Advisory Committee; Meeting Cancellation

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting cancellation.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) meeting scheduled for May 5 and 6, 2003, and announced in the **Federal Register** on April 3, 2003 (68 FR 16299), has been cancelled. A notice of meeting will be published in the **Federal Register** when the meeting is rescheduled.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700 or e-mail: *Mhegy@comdt.uscg.mil.*

Dated: April 28, 2003.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–10943 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–20]

Notice of Proposed Information Collection: Comment Request; New Approach to the Anti-Drug Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6152, Washington, DC 20410; (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: New Approach to the Anti-Drug Program.

OMB Control Number: 2502–0520.

Description of the need for the information and proposed use: The New Approach to the Anti-Drug Program (formerly known as the Safe Neighborhood Action Grant Program) was authorized through yearly appropriations. Owners are eligible to apply for grants to fund security, and crime elimination activity in federally assisted low-income housing projects. Funding for this program has not been appropriated since Fiscal Year 2001, but quarterly progress reports are still required for all active grants.

Agency Form Numbers, if applicable: HUD–50080–SNGP & SF–269.

Estimation of the total numbers of hours needed to prepare the information collection including number of

respondents, frequency of response, and hours of response: The estimated number of respondents is 250 generating approximately 1,750 annual responses; the potential frequency of responses is on occasion and quarterly; the estimated time needed to prepare the response varies from 15 minutes to 2 hours; and the estimated total number of burden hours needed to prepare the information collection is 1,313.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 28, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–11051 Filed 5–2–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–23]

Notice of Submission of Proposed Information Collection to OMB: Title I Property Improvement and Manufactured Home Loan Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 4, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0328) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Title I Property Improvement and Manufactured Home Loan Programs.

OMB Approval Number: 2502–0328.

Form Numbers: 637, 646, 27029, 27030, 55013, 55014, 56001, 56001–MH, 56002, 56002–MH, 56004, and 92802.

Description of the Need for the Information and its Proposed Use: Title I loans are made by private sector lenders and insured by HUD against loss from defaults. Financial institutions obtain insurance on loans for repair/improvement of property; purchase of a manufactured home and/or lot; the purchase of fire safety equipment in existing health care facilities; and the preservation of historic structures. The information collected is used by HUD to evaluate individual lenders' overall program performance and determine claim eligibility.

Respondents: Individuals or households, Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	18,300		7.16		0.46		61,269

Total Estimated Burden Hours: 61,269.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–11052 Filed 5–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–24]

Notice of Submission of Proposed Information Collection to OMB: Fee or Roster Designation and HUD Conditions and Appraisal Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 4, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0538) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Fee or Roster Designation and HUD Conditions and Appraisal Report.

OMB Approval Number: 2502–0538.

Form Numbers: HUD–92563, HUD–92564–VC, HUD–92564–HS, HUD–92564–CN, Fannie Mae 1004 and 1004B.

Description of the Need for the Information and its Proposed Use: Lenders contemplating providing a mortgage for a single-family property require a standard, industry-acceptable appraisal. This information supplements those standard appraisals for FHA-insured mortgages and is necessary to protect the interest of HUD, the taxpayers, and the FHA insurance fund. In addition, information is collected to ensure real estate appraiser is qualified.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	18,240	1,203,240		0.5		577,620

Total Estimated Burden Hours: 577,620.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–11053 Filed 5–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–27]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA) and the Internal Revenue Service (IRS).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is updating its notice of a matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and independent sources of income information. The matching program will be carried out to detect inappropriate (excessive or insufficient) housing assistance under the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998. The program provides for the verification of the matching results and the initiation of appropriate administrative or legal actions, primarily through public housing agencies (HAs) and owners and agents (all collectively referred to as POAs). Indian tribes and tribally designated housing entities (TDHEs) are not a mandatory component of the computer matching program. Participation by Indian tribes and TDHEs is discretionary; however, they may receive and use social security and supplemental security income matching information provided by HUD.

This notice provides an overview of computer matching for HUD's assisted housing programs. Specifically, the notice describes HUD's program for computer matching of its tenant data to: (a) The SSA's earned income and the IRS's unearned income data, (b) SSA's wage, social security, supplemental security income and special veterans benefits data, (c) State Wage Information Collection Agencies' (SWICAs') wage and unemployment benefit claim information, and (d) the Office of Personnel Management's (OPM) personnel data.

DATES: *Effective Date:* Computer matching is expected to begin June 4, 2003 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: June 4, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: *For Privacy Act:* Jeanette Smith, Departmental Privacy Act Officer, Room P8001, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–2374. A telecommunications device for hearing- and speech-impaired individuals (TTY)

is available at 1–800–877–8339 (Federal Information Relay Service). *For further information from recipient agency:* Elking Tarver, Project Manager, Tenant Assessment Sub-System, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2635, telephone number (202) 708–4932, extension 3235.

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on November 20, 2000 (65 FR 71112). Since that time, the matching program has been implemented on a large scale. In previous years, the computer matching was carried out for random samples of households receiving rental assistance or for selected POAs. During calendar year 1999, HUD used the matching program for a large-scale computer matching project involving over 2 million households. HUD announced plans for the large-scale implementation of the program in 64 FR 49817 (September 14, 1999).

The Computer Matching and Privacy Protection Act (CMPPA) of 1988, as amended (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal 2, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In accordance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); section 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437o); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)).

The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from the SSA and the IRS Federal tax information as prescribed in section 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code). Section 542(b) of HUD's 1998 Appropriation Act (Pub. L. 105–65; October 27, 1997) eliminated a September 30, 1998, sunset provision to 26 U.S.C. 6103(l)(7)(D)(ix) of the Internal Revenue Code, effectively making permanent the authority for SSA and IRS disclosures of Federal tax information to HUD.

The Federal tax information that HUD receives includes income data that individuals receive from employers and financial institutions (*e.g.,* income data that would be shown on IRS Form W–2 and Form 1099) for use in preparing tax returns. The Budget Reconciliation Act prohibits HUD redisclosure of tax data to POAs. However, it allows HUD to disclose the fact that discrepancies exist between income information provided by tenants and Federal tax information, and to request that POAs reverify tenant incomes when income comparisons indicate uncertain eligibility benefits or an inappropriate level of benefits.

Section 3003 of the Budget Reconciliation Act authorizes HUD to require applicants and participants in assisted housing programs sign a consent form authorizing the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release the Federal tax information. The final rule regarding participants' consent to the release of information was published by HUD in the **Federal Register** on March 20, 1995 (61 FR 11112).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and HAs (but not private owners/management agents for subsidized multifamily projects) to request wage and claim information from SWICAs responsible for administering State unemployment laws in order to undertake computer matching. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the HA to request wage and claim information from the SWICAs.

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs.

The Quality Housing and Work Responsibility Act of 1998 (QHWRA), section 508(d), 42 U.S.C. 1437a(f) (1998) authorizes the Secretary of HUD to require disclosure by the tenant to the public housing agency of income information received by the tenant from HUD as part of income verification procedures of HUD. The QHWRA was amended by Public Law 106–74, which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participants' eligibility or level of benefits.

II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to increase the availability of rental assistance to individuals who meet the requirements of the rental assistance programs. Other objectives include determining the appropriate level of rental assistance, and deterring and correcting abuse in assisted housing programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate. Using Federal tax information, HUD conducts a computer matching and income verification program annually for a random sample of households that received rental assistance. Based on the computer matching and subsequent HUD analysis of tenant-provided information, HUD develops nationwide estimates of the extent of excess rental assistance, and uses the estimates for financial statement reporting purposes. HUD implemented a large-scale computer matching project in Fiscal Year 2000 that used 1998 information from other Federal agencies. HUD sends letters to tenants and notices to POAs so that these parties may resolve the income discrepancies.

HUD's various assisted housing programs, available through POAs, require that applicants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at

least annually. However, under the QHWRA of 1998, public housing agencies may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (65 FR 16692; March 29, 2000) specified that household composition must be recertified annually for tenants who select a flat rent or an income-based rent.

The matching program identifies tenants receiving inappropriate (excessive or insufficient) rental assistance resulting from under or over-reported household income. When excessive rental assistance amounts are identified, some tenants move out of assisted housing units; other tenants agree to repay excessive rental assistance. These actions may increase rental assistance or number of units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for rental assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

Tribes and TDHEs set admission and eligibility requirements pursuant to the requirements contained in the Native American Housing Assistance and Self-Determination Act of 1996. They are not required to provide tenant data to the Department. Therefore, their participation is discretionary.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated files will be compared to data from the SSA and the IRS. HUD will normally request that the SSA conduct matching of earned income information and that the IRS conduct matching of unearned income information at least annually. The Federal tax information matching normally occurs in the first quarter of the Federal Fiscal Year, which begins in October and uses Federal tax information for the prior tax year.

HUD will also request SSA matching of social security, supplemental security income, and special veterans benefits information monthly for residents due to be recertified in four months, and daily (on the receipt of new certifications) for residents. The daily process is currently used only for HUD's Office of Housing's Rental Assistance Programs and may be expanded to the Office of Public and Indian Housing's rental assistance programs. Indian Tribes and Tribally Designated Housing Entities may receive and use social security and supplemental security income matching information provided by HUD.

HUD may also request SWICA matching to supplement SSA and IRS matching and income verification. Public housing agencies, but not owners and management agents, may also request SWICA matching.

HUD will disclose to the SSA, IRS, and SWICAs only tenant personal identifiers, *i.e.,* SSNs, surnames, and dates of birth. The SSA, IRS, and SWICAs will conduct the matching of the HUD-provided personal identifiers to personal identifiers included in their automated files. Those agencies will provide income data to HUD only for individuals with matching personal identifiers. The process of income matching between HUD and the OPM varies from the above. The OPM will disclose its data to HUD, and HUD will conduct the computer matching to OPM data.

HUD will then compare income data obtained from the sources cited above to tenant-reported income data included in HUD's system of records known as the Tenant Eligibility Verification Files (HUD/REAC–1) published at 65 FR 52777; August 30, 2000. HUD/REAC–1 receives tenant data from the Tenant Housing Assistance and Contract Verification Data (HUD/H–11), published at 62 FR 11909, March 13, 1997. The tenant income comparisons identify, based on criteria established by HUD, tenants whose incomes require further verification to determine if the tenants received appropriate levels of rental assistance.

A. Income Verification

HUD will normally request that POAs verify matching results as described below. However, under certain limited circumstances, HUD may verify tenant incomes with independent income sources. For example, such circumstances may include: (a) When HUD declares a public housing agency in breach of an annual contributions contract; or (b) when tenants fail to disclose SSA and IRS data, or the tenants commit other serious violations, and HUD's analysis of the data could support legal actions. HUD may send letters to employers to request income data, but HUD will not disclose tax data to POAs.

(1) Verification of SSA and IRS Data Referenced in Section 6103(l)(7) of the Internal Revenue Code

Since HUD cannot redisclose tax data directly to POAs, HUD will notify tenants of discrepancies between the tenant-reported income and the SSA and IRS data. HUD will supply the tenants with their income information taken directly from SSA and IRS data and request that the tenants provide this information to the POA. Concurrently, HUD will notify the POA that a discrepancy exists between information provided by the tenants and other sources and will request reverification of the tenants' incomes. The notifications to the POAs will not include any tax information.

Income information that tenants disclose to the POAs will be verified directly with the income source or with the tenant. HUD has determined that POAs may consider the Federal tax information that tenants disclose to the POAs as verified if the tenant does not contest the accuracy of this information when offered an opportunity to do so. If the tenant contests the Federal tax information, the POA must verify it with the entities that provided the information to the SSA or the IRS.

The SSA and the IRS have advised HUD that the process described in the preceding paragraph is consistent with the intent of section 6103(l)(7) of the Internal Revenue Code, as the intent of the matching is to create a dialogue between the benefit recipient and the benefit provider.

(2) Verification of Social Security, Supplemental Security Income and Special Veterans Benefits Data

Unlike the income information supplied by the SSA and the IRS for tax purposes, SSA's social security, supplemental security income and special veterans benefits data may be disclosed to POAs. (The Foster Care Independence Act of 1999; Pub. L. 106–169 provided a new Title VIII of the Social Security Act, which authorized special benefits for certain World War II veterans.) Therefore, after receiving this data from the SSA and comparing it to tenant-reported income, HUD will disclose the SSA social security, supplemental security income and special veterans benefits data to POAs. These disclosures will include information on monthly social security, supplemental security income, and special veterans benefits data and, where applicable, income discrepancy information between tenant-reported data, as reported by POAs, and the income amounts provided by the SSA. POAs will use this information in periodic verifications of tenant incomes that are required to determine program eligibility and rental assistance amounts. HUD has implemented secure electronic facilities for transmitting social security, supplemental security

income and special veterans benefits data to all POAs.

(3) Verification of SWICAs Data

HUD will disclose matching results for SWICAs wage and unemployment claim data directly to HAs. The comparison of SWICAs wage information and the tenant-reported data will reveal whether income verification is necessary. HAs must then obtain wage information directly from the tenants' employers, including information from prior 4 years, when appropriate. The SWICAs unemployment claim data must be verified with the tenants. Verification of the income data with employers or the SWICAs would only be required if tenants dispute the SWICAs data.

(4) Verification of OPM Data

HUD will disclose matching results for OPM personnel data to POAs. The OPM data, when compared to the tenant-reported data, provides an indicator that income verification is necessary. The POA may then obtain current or prior wage information directly from employers when appropriate.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, HUD anticipates that POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

POAs must compute the rent in full compliance with all applicable occupancy regulations. POAs must ensure that they use the correct income and correctly compute the rent.

The POAs may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the POA of its findings and informing the tenant of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, POAs will resolve income discrepancies in consultation with tenants.

IV. Records To Be Matched

SSA and IRS will conduct the matching of tenant SSNs and additional identifiers (such as surnames and dates of birth) to tenant data that HUD supplies from its system of records known as the Tenant Housing Assistance and Contract Verification Data (HUD/H–11). Within HUD, this system of records includes two automated systems known as the Multifamily Tenant Characteristics System (a system for programs under the Office of the Assistant Secretary for Public and Indian Housing) and the Tenant Rental Assistance Certification System (a system for programs under the Office of the Assistant Secretary for Housing—Federal Housing Commissioner). POAs provide HUD with the tenant data that is included in HUD/H–11.

The SSA will match the HUD/H–11 records to the SSA's Earnings Recording and Self-Employment Income System (HHS/SSA/OSR, 09–60–0059) (Earnings Record); Master Beneficiary Record (HHS/SSA/OSR, 09–60–0090) (MBR); and Supplemental Security Income Record (HHS/SSA/OSR, 09–60–0103) (SSR). The IRS will match the HUD/H–11 records to its Wage and Information Returns (IRP) Master File (Treas/IRS 22.061). The IRS also refers to this file as the Information Return Master File (IRMF).

HUD will place matching data into its system of records known as the Tenant Eligibility Verification Files (HUD/REAC–1). The HUD/REAC–1 records are specifically exempt from certain provisions of the Privacy Act, as described in notices published on February 28, 1994 (59 FR 9406) and March 30, 1994 (59 FR 14869).

HUD may also coordinate SWICAs income computer matches for its rental assistance programs using tenants' SSNs and surnames. SWICAs will match tenant records to machine-readable files of quarterly wage data and unemployment insurance benefit data. Results from this matching will be provided to HUD or HAs, which will then determine whether tenants have unreported or underreported income. The matching will be done in accordance with a written agreement between the SWICAs and HUD.

In addition, tenants SSNs may be matched to the OPM's General Personnel Records (OPM/GOVT–1) and the Civil Service Retirement and Insurance Records System (OPM/Central-1). Tenant data may be matched to the SSA's Master Files of Social Security Number Holders (HHS/SSA/OSR, 09–60–0058) and Death Master Files for the purpose of validating SSNs contained in tenant records. These records will also be used to validate SSNs for all applicants, tenants, and household members who are six (6) years of age and over to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by POAs to reveal duplicate SSNs and potential duplicate housing assistance.

V. Period of the Match

The computer matching program will be conducted according to agreements between HUD and the SSA, IRS, OPM, and SWICA. The computer matching agreements for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreements may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: April 24, 2003.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 03–11054 Filed 5–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Policy and Procedures for Collection of Missing Indian Trust-Related Records From Third Parties

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This document establishes policy and procedures that the Department of the Interior (DOI) will follow to collect relevant, available Indian trust-related records from third parties to conduct a historical accounting of Individual Indian Monies (IIM) or Tribal Trust accounts. Collection of these records would supplement existing Federal records and assist the Department in assembling complete records in those instances where Federal records are incomplete or missing.

FOR FURTHER INFORMATION CONTACT: Bert Edwards, Executive Director, Office of

Historical Trust Accounting, 1801 Pennsylvania Avenue NW., Suite 400, Washington DC 20006, telephone 202–327–5300, or by facsimile at 202–327–5375.

SUPPLEMENTARY INFORMATION: The remainder of this notice is divided into two parts. Part one contains the policy and procedures the Department will follow in collecting Indian trust-related records from third parties needed to complete the historical accounting. Part two is an explanation of the Department's policy and how it evolved.

Part One: Policy and Procedures for Collecting Indian Trust-Related Records From Third Parties

I. Policy

The Department's Office of Historical Trust Accounting (OHTA) will identify, locate, and secure available data, including missing trust-related records, as necessary, to conduct a historical accounting of Individual Indian Monies (IIM) or tribal accounts.

II. Objective

The objective of this policy is to supplement existing Federal records by collecting relevant, available Indian trust-related records from third parties for purposes of conducting a historical accounting of IIM or tribal accounts.

III. Responsibility

OHTA is responsible for carrying out the procedures identified in this policy and for coordinating with other DOI bureaus and offices, as appropriate.

IV. Procedures To Be Followed in Collecting Trust Information

OHTA must use the following actions to locate and secure missing Indian trust-related information from third parties.

1. Alert Potential Third Parties to DOI's Efforts to Locate and Secure Possible Missing Indian Trust-Related Records, and Request Retention

(a) Alert potential third parties to DOI's efforts and the need to retain relevant records through **Federal Register** notices, letters, newspaper ads, presentations at meetings and conferences, information bulletins in mailings, and other means.

(b) Potential third parties include:

(1) Tribes;

(2) Federal agencies (other than Bureaus within DOI);

(3) State agencies;

(4) County agencies;

(5) Municipal agencies;

(6) Financial Institutions;

(7) Companies;

(8) Law firms;

(9) Colleges and universities;

(10) Professional organizations and societies; and

(11) Individuals.

2. Identify Information and Records Needed

(a) Identify records necessary, *e.g.,* to complete the historical accounting use document types described in the *Accounting Standards Manual* issued by OHTA.

(b) Assess known information gaps and missing Indian trust-related records. For example, in preparing the historical accounting:

(1) Use results from a current Office of Trust Records project to index existing records;

(2) Survey Interior Bureaus to determine the availability of relevant records; and

(3) Complete an evaluation of relevant automated systems.

(c) Identify specific information gaps that might be filled by third parties.

3. Identify and Locate Indian Trust-Related Records Held by Potential Third Parties

(a) Identify potential third parties by resource and document type.

(b) Contact potential third parties.

(c) Ask potential third parties to identify, inventory, and secure available, relevant Indian trust-related records, providing a copy of the inventory to DOI.

4. Obtain Third-Party Records

(a) Once a data gap has been identified, review available third-party inventories and identify records that pertain.

(b) Secure relevant Indian trust-related records through an electronic image, paper copy, or in some instances, assuming custody of original records.

(c) Store available records in an appropriate records storage facility.

Part Two: Explanation of the Department's Policy

I. Oil and Gas Industry Pilot Project

In an effort to gauge the potential availability of third-party Individual Indian Monies-related or Tribal-related information, DOI initiated a pilot project focused on the oil and gas industry. A **Federal Register** notice was published on February 6, 2002 (67 FR 5607), requesting that, ''anyone in possession of records related to IIM trust funds to notify the Department, and preserve and maintain such records indefinitely.'' The notice also noted that DOI would be willing to take custody of these records, if the current owner preferred.

In March 2002, this notice was followed with a letter sent to approximately 4,200 addresses derived from the *Oil and Gas Journal* subscription list. This letter asked if the company addressee possessed records relating to production on individual-allotted Indian lands and requested an inventory of those records from 1887 to the present. The letter requested that the company preserve and maintain these documents. It also asked for a copy of the company's records retention policy.

In July 2002, staff from OHTA conducted an on-site survey of some documents held in storage by a responding company located in Denver, Colorado. The purpose of this review was to determine what data may be available from third-party sources and to estimate their relevance to the historical accounting effort. The review revealed that trust records represent a very small percentage of the stored materials and are interspersed with non-trust data. The review also led to the conclusion that locating trust data within the volume of stored records would be a labor-intensive exercise, particularly where there is no data inventory.

A final component of this pilot project involved a presentation at the fall conference of the Council of Petroleum Accountants Society in October 2002. In this case, information was presented to the conference describing OHTA, its role in collecting missing information and in completing the historical accounting for IIM account holders. The discussion following the presentation revealed the following.

—Many of the companies represented at the conference are retaining data they believe are relevant to Indian trust resources.

—Industry consolidation could make data collection more difficult because acquiring companies may not be fully aware of the content or completeness of records ''inherited'' from an acquired company.

—Companies are concerned that old, and potentially unknown, liabilities inherited from acquired companies could be discovered if they surrender records to the Federal Government.

—Few, if any, companies have segregated Indian data from non-Indian data, and it could be costly to as so, particularly for inactive, archived records.

—Companies are concerned about Federal access to records unrelated to Indian trust.

II. Explanation of the Procedures for Collecting Trust Information

This part explains the procedures in section IV of part one of this notice. The numbered paragraphs correspond to the paragraph numbers in section IV of part one.

1. Alert Potential Third Parties of DOI's Efforts To Locate and Secure Possible Missing Indian Trust-Related Information, and Request Retention

OHTA expects to write letters, publish notices in the **Federal Register**, and take ads in local, regional, and national newspapers, Tribal publications, and trade and professional publications to alert potential third parties of the possible need for their Indian trust-related records. In the case of historical accounting, for example, the notices and ads will describe the historical accounting effort, and request individuals and organizations to inventory their records and notify OHTA if they believe they possess records relevant to income production on individual Indian or Tribal lands. Additionally, OHTA will make presentations to professional organizations as a means of making a direct request for assistance in locating relevant data. In those instances where a specific third party is a likely source of records, OHTA will approach the entity directly.

Further, another process to locate third-party data involves inserting informational notices into routine mailings administered by DOI agencies and non-DOI agencies (such as the U.S. Forest Service). This process would alert third parties directly and ask for their assistance in locating appropriate data. With the cooperation of elected officials, a similar mailing could be directed toward a larger audience by inserting informational notes into Congressional letters mailed to constituents.

2. Identify Information Needed

In order to secure relevant data, it is important to identify the information needs that exist. Searching for third-party data before knowing whether these data are necessary is neither efficient nor effective. The relevance and importance of third-party data will be determined by information gaps identified. Thus, it is important to know what information gaps exist and then develop an approach to fill those gaps.

For example, after consulting with five major accounting firms, OHTA has issued an *Accounting Standards Manual* that identifies key document types for accounting teams to use in performing the historical accounting. At present, the *Manual* focuses on documents under Federal control. As the historical accounting progresses, the *Manual* is expected to be updated as more is learned about the types of documents available and the types of documents utilized over time. In those instances where OHTA is not able to use or locate federally held records to document a transaction, the manual will identify equivalent third-party data as a means to support the accounting.

Third-party data would likely reside with entities involved in the revenue stream or production activities associated with Indian trust resources, or with those parties that received the revenue. Analysis of these activities, as well as lines of communication associated with them, will help identify documents potentially held by third-party custodians. For example, data relevant to judgments are likely to be associated with court records. Searching pertinent court records may produce documents suitable for use in documenting transactions associated with judgment accounts.

A number of efforts have been initiated to address potential information gaps. The Office of Trust Records (OTR) has initiated a contract to index records in the OTR Albuquerque facilities and the Lee's Summit, Missouri, Federal Records Center. This effort will provide an assessment of records and record types in Federal custody and can be used to identify those that may have to be searched among third parties. In addition, several Bureaus within DOI, including Bureau of Indian Affairs, Minerals Management Service, U.S. Geological Survey, and the Bureau of Land Management will be asked to identify the types of records they have destroyed as part of an approved document retention/disposition plan, or accidentally. This survey will also provide information about records in Federal possession and those that could be searched and perhaps retrieved from third parties.

Gaps in available data will also be detected as OHTA undertakes the accounting effort. Analyses will verify account transactions with actual records. Transactions that cannot be corroborated will usually indicate the need to search for additional relevant data. Identification of data gaps through the reconciliation process is anticipated to result in specific and relevant data needs, and may require identifying and collecting records held by third parties.

3. Identify and Locate Records Held by Potential Third Parties

Once an information need has been identified and it has been confirmed that the necessary trust-related data are not under Federal control, the next step is to identify a potential source from an entity other than a Bureau within DOI, *i.e.,* a third party.

The number and range of potential third parties is extensive. State and county agency records may offer a number of data sources. For example, State revenue records usually contain data on both personal and business tax assessments and payments; County Clerk offices may have data to identify and confirm property ownership or property leases; Oil and Gas Commissions can have records on production rates, prices, and royalties; State and regional Geological Societies may possess information to help determine oil quality and production areas; State Agricultural Departments are likely to hold data about crop harvest, grazing, and dairy production; State Forestry Departments could have information relevant to timber production, timber harvest, and timber sales.

Private companies are also likely to have data to confirm lease payments, rights-of-way payments, and production data. Federal agencies other than DOI could have data on timber harvest, surface mine production, grazing, and recreational revenues. The U.S. General Accounting Office may have information relative to previous accountings, and the Department of the Treasury is likely to have records of cashed checks issued to, or on behalf of IIM account holders by the Federal Government. Financial institutions, colleges and universities, State and local historical societies, professional and business associations, and a variety of other entities may possess records that will be relevant to the historical accounting process.

Finally, it is very possible individual Indians and Tribes may possess records that can be used to supplement Federal records. As the accounting effort identifies a need to supplement available Federal records, the appropriate organization(s) will be identified and attempts made to secure copies of existing records.

4. Obtain Third-Party Data

Once a potential data need has been identified and a possible records source has been recognized, OHTA will undertake prudent action to contact the source, review available documents, and attempt to secure a copy of relevant

data. The availability of inactive records held by individual entities will vary since experience indicates there is no ''industry standard'' document retention policy.

In some instances, entities may request that DOI take custody of relevant documents. In appropriate cases, DOI will identify a suitable secure storage site (*e.g.,* a Federal Records Center) and take possession of the records. Appropriate security and access strategies will be employed to ensure that the documents are available for the historical accounting effort.

Dated: April 30, 2003.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 03–11095 Filed 5–1–03; 9:38 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Swiss Reinsurance Company (''SwissRe'') to conduct a probabilistic study of earthquake hazards in the greater Tokyo area.

Inquiries: If any other parties are interested in studying other areas with the USGS, please contact Dr. Ross Stein, tel 1–650–329–4840, fax 1–650–329–4876, e-mail *rstein@usgs.gov.*

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 6, 2003.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 03–10937 Filed 5–2–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1150–PG]

Notice of Public Meeting, Upper Snake River Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Snake River Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held June 4 and 5, 2003 at the Best Western Sawtooth Inn, 2653 South Lincoln, in Jerome, Idaho. The meeting will start June 4 at 2 p.m., with the public comment period beginning at approximately 2:10 p.m. The meeting will adjourn on June 5 at about 5 p.m. The meeting will also include a field trip the afternoon of June 5 to the North Rim of the Snake River.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Upper Snake River District (USRD), which covers south-central and southeast Idaho. At this meeting, topics we plan to discuss include:

Updates on major planning projects in the USRD, including coordination of subgroups.

Review feedback and action items from National RAC Chairs' meeting.

Review of items from Idaho RAC Chairs' meeting, including review and planning of statewide issues.

Other items of interest raised by the Council.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Other USRD RAC meetings for 2003 have been planned for July and November 2003, and will be announced in a future **Federal Register** Notice and through local media.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559.

Dated: April 25, 2003.

David O. Howell,

Public Affairs Specialist.

[FR Doc. 03–10956 Filed 5–2–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–03–1610–00]

Correction to Notice of Intent to Prepare an Amendment to the Hollister Resource Management Plan for the Clear Creek Management Area in the Southern Portion of San Benito County and Western Fresno County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: On April 29, 2003 the Bureau of Land Management published a notice in the **Federal Register** (68 FR 22733) concerning a Notice of Intent to Prepare an Amendment to the Hollister Resource Management Plan for the Clear Creek Management Area in the southern portion of San Benito County and western Fresno County, CA. The notice omitted the date for when the public comment period ends. The correct date is May 28, 2003.

FOR FURTHER INFORMATION CONTACT: George E. Hill, Assistant Field Manager, Hollister Field Office, (831) 630–5036, or e-mail: *George_Hill@ca.blm.gov.*

Correction

In the **Federal Register** of April 29, 2003 on page 22733 in the first column correct the **DATES** caption to read:

''**DATES:** Comments on issues and planning criteria can be submitted in writing to the address listed below. Comments should be received on or before May 28, 2003. All public meetings will be announced at least 15 days prior to the event.''

Dated: April 29, 2003.

George E. Hill,

Assistant Field Manager.

[FR Doc. 03–10982 Filed 5–2–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0087).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''30 CFR Part 228, Cooperative Activities with States and Indian Tribes.''

DATES: Submit written comments on or before July 7, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION: *Title*: 30 CFR Part 228, Cooperative Activities with States and Indian Tribes.

OMB Control Number: 1010–0087.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Secretary of the Interior is authorized by Public Law 97–451, the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1732, and 30 U.S.C. 1701 *et seq.* to enter into cooperative agreements using the capabilities of States and tribes to carry out royalty audits and related investigation and enforcement activities. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, amended FOGRMA and essentially limited Part 228 to Indian tribes. As noted under § 228.3, this part does not apply to Federal lands. Federal lands are audited by States under the provisions of Part 227, Delegation to States. Cooperative agreements benefit both MMS and Indian tribes by helping to ensure proper product valuation, correct and timely production reporting, and correct and timely royalty payment through the application of an aggressive and comprehensive audit program. To be considered for a cooperative agreement, Indian tribes must comply with the regulations of 30 CFR part 228 by submitting a written request to the Director, MMS, and preparing a proposal detailing the work to be done.

Currently, eight Indian tribes have cooperative audit agreements to perform audits and investigations. When an Indian tribe performs any of the delegated functions under the 30 CFR 228 regulations, the Indian tribe also assumes the burden of providing various types of information to MMS. This information, provided to MMS in the course of performing cooperative audit work, is the focus of this information collection. We have changed the title of this ICR from ''Cooperative Agreements'' to ''30 CFR Part 228, Cooperative Activities with State and Indian Tribes'' for consistency with the regulatory language we are covering under 30 CFR part 228.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory. Both MMS and Indian tribes are required to safeguard and protect proprietary data obtained during the course of performing audit activities.

Frequency of Response: Quarterly, annually, or when deemed necessary.

Estimated Number and Description of Respondents: Eight Indian tribes currently have cooperative audit agreements. Over the next 3 years, we expect one or two more tribes to apply.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,912 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

TRIBAL RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR Hours Section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
228.100(a) and (b)(1), (2), (3), and (4); 228.101(c); 228.107(b).	* * * Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the * * * tribal chairman * * * to the Director of MMS. The request for an agreement shall be in a format prescribed by MMS * * * Agreements * * * shall be valid for * * * 3 years and shall be renewable * * * upon request of the * * * Indian tribe * * * Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate. Each cooperative agreement shall contained detailed schedules identifying those activities and costs which quality for funding and the procedures, timing, and mechanics for implementing Federal funding.	200	1	200
228.101(d)	* * * Indian tribe 80 180 will be given 60-days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies.	80	1	80

TRIBAL RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR Hours Section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
228.103(a) and (b)	The * * * Indian tribe entering into a cooperative agreement * * * must retain all records, reports, working papers, and any backup materials * * * The * * * Indian tribe shall maintain all books and records * * *.	120	8	960
228.105(a)(1) and (2)	The Department may * * * reimburse the * * * Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a workplan and funding requirement. A cooperative agreement may be entered into with * * * Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.	60	8	480
228.105(c)	The * * * Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30-days of the end of each calendar quarter. The * * * Indian tribe must provide the Department a summary of costs incurred, for which the * * * Indian tribe is seeking reimbursement, with the voucher.	4	48	192
Total			66	1,912

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have not identified any non-hour cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * .'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified any non-hour, start up costs. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: April 30, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–11041 Filed 5–2–03; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Statement on the Klamath Project Operation, Oregon and California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Supplemental information related to the notice of intent to prepare a draft environmental impact statement.

SUMMARY: The Bureau of Reclamation (Reclamation) is continuing work under the National Environmental Policy Act on an environmental impact statement (EIS) for the Klamath Project (Project)

operation, a Federal reclamation project, located in southern Oregon and northern California. This supplemental NOI is being published to describe the current proposed action, the purpose of and need for that proposal, and the scope of the EIS. Reclamation is proposing substantial changes in the proposed action alternatives that are relevant to environmental concerns, and there are new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts.

DATES: Reclamation is initiating a formal scoping period of 120 days following the publication of this supplemental NOI. Reclamation invites all interested parties to submit written comments or suggestions during the scoping period. Written comments should be sent to the Reclamation Project Manager (see **ADDRESSES** below) by September 2, 2003. Comments postmarked after that date will be considered to the extent practical.

A public mailing that outlines the project timeline and public involvement opportunities is planned for distribution subsequent to publication of this supplemental NOI. Individuals who want to receive this mailing should contact us within 15 days of the publication of this supplemental NOI.

ADDRESSES: Please send written comments to Mr. Daniel S. Fritz, Project Manager, Klamath Basin Area Office, Mid-Pacific Region, Bureau of Reclamation, Attention: KO–150, 6600 Washburn Way, Klamath Falls, OR 97603.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Fritz at 541–880–2556.

SUPPLEMENTARY INFORMATION: The preliminary alternatives developed in January 2001 are being reconsidered because many of the underlying assumptions used to develop alternatives for detailed analysis in the EIS have changed. The purpose of and need for the action should be clarified. This supplemental notice (1) summarizes the activities related to alternative formulation and other events to date, (2) defines and clarifies the proposed action, (3) defines and clarifies the purpose of and need for the proposal, and (4) defines and clarifies the scope of the action and the EIS. The proposed action was the subject of a Notice of Intent (NOI) published in the **Federal Register** (62 FR 61343, Nov 17, 1997) and a supplemental NOI published in the **Federal Register** (64 FR 6911, Feb 11, 1999).

Background

In the November 1997 notice, Reclamation described the proposed action as ''* * * a plan for operations of the Klamath Project (Project) to cover an interim period, pending completion of a water rights adjudication * * *. The plan will be developed to define project operations in relation to Reclamation's responsibilities and obligations concerning the Endangered Species Act, senior water rights, tribal trust resources, Project water users' contractual rights, wildlife refuges and other requirements * * *.'' The proposed action was characterized as an ''interim'' plan for long-term operations.

The February 1999 supplemental notice also stated the proposed action as ''an interim plan for long-term operations * * * pending completion of a water rights adjudication'' but clarified what the draft EIS would address by stating ''several alternative operational scenarios will be developed to define project operations in relation to Reclamation's legal responsibilities and obligations * * *.'' The supplemental notice also stated that it was being published because considerable time had passed without significant activity regarding development of the EIS.

Reclamation proceeded with scoping by circulating a ''Summary of Klamath Project Operation Issues'' for public review and comment in January 1999. Reclamation received 31 responses to this document. No formal scoping meetings were held. A ''Scoping Report for the Long-Term Operations Plan for the Klamath Project'' that summarized the concerns and issues raised in the responses was prepared and distributed to the public in May 1999.

A series of public information meetings were held in Klamath Falls, Oregon, Yreka, Orleans, Klamath, and Eureka, California, from May 17 through May 20, 1999. Presentations included, among other topics, an overview of the EIS process, scoping issues, purpose and need, and alternatives. A total of 118 people attended these meetings.

Also in May 1999, Reclamation invited several parties to participate as cooperating agencies (see 40 CFR 1501.6) in preparation of the EIS, including the Klamath Tribes, Yurok Tribe, Karuk Tribe, Hoopa Valley Tribe, U.S. Fish and Wildlife Service (Service), National Marine Fisheries Service (NMFS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), U.S. Forest Service, Natural Resources Conservation Service (NRCS), California Department of Fish and Game, Oregon Department of Fish and Wildlife, Klamath County, Oregon, and Siskiyou and Modoc Counties, California, and the Klamath Water User's Association. The three counties and the Klamath Water User's Association entered into written cooperating agency agreements with Reclamation.

Reclamation met with the cooperating agencies in July and September 1999, and in March 2000, to discuss the scope, purpose and need, and alternatives for consideration in the EIS. By June 2000, Reclamation developed 10 preliminary alternatives for consideration and met with cooperating agencies in July 2000 to discuss the preliminary alternatives. In August 2000, Reclamation received the cooperating agencies' written comments on the preliminary alternatives and Chapter 1 of the draft EIS, ''Purpose of and Need for the Action.'' In September 2000, Reclamation continued the alternative development process by evaluating the cooperating agencies' comments regarding the 10 preliminary alternatives and subsequently reduced the number of alternatives from 10 to 5. Reclamation informed the cooperating agencies of the five tentative alternatives in a January 31, 2001 EIS status report, but advised them that further alternative development and analyses were pending completion of certain studies, such as the ''Evaluation of Instream Flow Needs in Klamath Basin—Phase II Final Report'' (Hardy Report). This study and the forthcoming biological opinions may greatly influence further alternative development. If those studies and the biological opinions had been completed in early 2001, Reclamation had planned to complete alternative development and finalize the alternatives by the end of April 2001.

The Hardy Report has not yet been completed and the biological opinions were not received until early April 2001. Further, the 2001 biological opinions did not address Project operation in all water year types; thus, Reclamation's ability to develop a long-term plan was delayed.

In late 2000, Congress enacted the Klamath Basin Water Supply Enhancement Act (Pub. L. 106–498) (Enhancement Act). It directed Reclamation to undertake feasibility studies of certain actions that could enhance the water supply in the Upper Klamath Basin. Such studies include increasing the storage capacity and/or yield of Project facilities, development of additional Klamath Basin groundwater supplies, and the potential for further innovations in the use of existing water resources.

The Enhancement Act also influences development of a long-term operations

plan. In March 2001, Reclamation undertook 1-year pilot programs for demand reduction and groundwater acquisition. In addition, Reclamation is proceeding with separate planning and NEPA documents for several Enhancement Act feasibility studies and activities, such as increasing the water storage capacity of Gerber Reservoir, winter irrigation in the Tule Lake area, and developing off-stream storage in the Lower Klamath Lake area.

Concurrent with the EIS activities described above, severe drought during late 2000 and early 2001 in south-central Oregon and northern California resulted in a critically dry situation in the Project area. The resultant severe inflow shortage to Upper Klamath Lake, coupled with the minimum river flow and lake level requirements of the Service and NMFS final biological opinions issued in early April 2001, brought about Reclamation's decision in the 2001 Annual Operations Plan to curtail most Project water deliveries from the lake in 2001 and reduce Project water deliveries for agriculture and refuges from other Project reservoirs. California developed some groundwater wells in 2001 to help offset the water shortages.

The 2001 Annual Operations Plan and related events substantially delayed Reclamation's progress with the EIS. Specifically, the biological opinions nullified most of the tentative alternatives and rendered successful development of a long-term operations plan and EIS dependent upon actions not within the defined scope of the EIS at that time. Reclamation continues to address the challenge of developing a long-term operations plan that meets obligations to Klamath River and Lost River water irrigators, tribes, and refuges and allows for operation of the Klamath Project in compliance with the Endangered Species Act (ESA).

Project Area Activities

Agricultural water users, tribes, local residents, and many other parties affected by or interested in Project operation have undertaken numerous planning efforts since the summer of 2001. These efforts are attempting to develop a framework or structure of a comprehensive solution to water resource development and use in the Klamath Basin. These efforts have not yet come to fruition but are continuing on many levels, both formally and informally. The results of these efforts could be relevant to and may even influence long-term Project operations. Reclamation is cognizant of the interest and actions of these stakeholders and will consider the results of these other processes during development of the EIS.

The National Academy of Science's Committee on Endangered and Threatened Fishes in the Klamath River Basin published an interim report in February 2002. This report focused on the 2001 biological opinions. The Committee's key conclusions were as follows:

• Regarding Upper Klamath Lake elevations: ''The present scientific record is consistent with use of operational principles in effect between 1990 and 2000.''

• Regarding Klamath River flows: ''On the whole, there is no convincing scientific justification at present for deviating from flows derived from operational practices in place between 1990 and 2000.''

Reclamation views these findings as very relevant, and they will influence development of a long-term operations plan. If the NRC's findings in its final report are different, the later findings will be considered and included in the development of this operations plan.

In early 2002, Reclamation completed a biological assessment (BA) of the effects of proposed Klamath Project operations on federally listed threatened and endangered species for a 10-year period (April 1, 2002, through March 31, 2012). An underlying objective of evaluating a 10-year period is to develop an operation that considers all hydrological conditions during a multiple year period-this is ''long-term'' operation. Reclamation submitted the final BA to the Service and NMFS in conformance with requirements for formal consultation under ESA. Consistent with ESA regulations, 50 CFR 402.14(g)(5), Reclamation worked closely with the Service and NMFS to develop reasonable and prudent alternatives for Project operation to avoid jeopardy to the listed species. The Service and NMFS each issued final biological opinions on the proposed action on May 31, 2002, which included those reasonable and prudent alternatives.

The Proposed Action

Reclamation proposes to implement an operations plan through March 2012 that provides for continued operation of the Klamath Project in a way that meets its legal obligations.

Operational Elements

Reclamation is presently operating the Project consistent with the May 2002 biological opinions (opinions) on Project operation issued by the Service and the National Oceanic and Atmospheric Administration (NOAA) Fisheries (formerly National Marine Fisheries Service). The opinions apply to Project operation through March 31, 2012.

Reclamation has undertaken an operational review of historic and ongoing Project operations to identify significant issues and effects related to those operations. The operational review will help Reclamation identify potential new actions that may be implemented to address the effects of operation and help meet its legal obligations related to Project operation. The operational review and development of an operations plan may result in new Federal actions that could lead to changes in Project operation and/or facilities. While no specific modifications are as yet proposed, Reclamation anticipates that such modifications will be identified and proposed as the operational review proceeds and the operations plan is developed. The operations plan would be an adaptive plan that describes management actions for operation of the Project's features and facilities to meet the defined needs through March 31, 2012. It would describe a process for anticipating and adapting demand for Project water annually during a multiple year period and during different hydrological conditions (ranging from very dry to very wet). It would be subject to revision when necessary (adapt) to address new information or circumstances that have bearing on Project operation and/or Project effects.

The following key elements of an operations plan have been tentatively developed during ESA consultations with the Service and NOAA Fisheries.

• The proposed action would be consistent with historic Project operation from water year 1990 (which began October 1, 1989) through water year 1999 (which ended September 30, 1999).

• The proposed action would include development of annual operating criteria developed consistent with the 2002 biological opinion RPA.

• The proposed action would also include development and use of a ''water bank'' of up to 100,000 acre-feet annually that would be acquired from several sources. (Began in 2002).

• Continued coordination with the Service, NOAA Fisheries, Klamath Basin Tribes, PacifiCorp, and irrigation districts to coordinate ongoing and anticipated Project operation activities and to discuss water supply conditions.

• Entrainment reduction into the A Canal from Upper Klamath Lake (under construction) and fish passage at Link River Dam.

• Development and participation in a basinwide Conservation Implementation Program.

• Additional water supplies resulting from reasonably foreseeable actions that may be implemented during the proposed period of operation.

Purpose of the Proposed Action

The purpose of the proposed action is to operate the authorized features and facilities of the Project during varying hydrological conditions through March 2012 to meet Reclamation's legal obligations and responsibilities as described in the need for the proposed action in the following section. Reclamation's goal is to retain Project viability in a manner that not only seeks to avoid jeopardizing federally listed threatened and endangered species, but also to conserve and protect those species and to address Reclamation's tribal trust obligation. The purpose of any new Federal actions stemming from the operations plan development that could result in changes or modification in Project operation or facilities would be to assist Reclamation in meeting its obligations and responsibilities related to annual and long-term Project operations.

Need for the Proposed Action

The need for the proposed action stems from an underlying need to reduce uncertainty, to the extent possible, by Reclamation, agricultural water users, tribes, national wildlife refuges, and other interested/affected parties about both short-term and long-term availability of Project water. There is a need to operate the Project consistent with applicable laws and to meet Reclamation's obligations related to operation of the Project. Those needs are:

• To deliver Project water in accordance with the Klamath Project water rights and contracts between Reclamation and agricultural water users;

• To comply with requirements of the ESA;

• To operate the Project in a manner that does not interfere with the Tribes' senior water rights;

• To provide adequate water to Lower Klamath and Tule Lake National Wildlife Refuges to fulfill their Federal reserved water rights, when in priority and when water is available.

Scope of the Proposed Action

The scope of the proposed action is developing a multi-year operations plan consistent with the purpose and need above. The scope of the DEIS consists of the range of actions, alternatives, and potential impacts to be considered by Reclamation. Those actions involve all elements of Project operations that Reclamation can implement that may affect the Project water supply and demand. Such actions include, but are not limited to, Project water (1) storage volume, location, and timing; (2) source (surface and/or groundwater); (3) delivery quantity, timing, and duration, and (4) quality. The potential environmental impacts to be considered in the DEIS are direct, indirect, and cumulative effects that may arise from the proposed action and alternatives.

The geographic scope of the DEIS includes areas and resources affected by water diversion, storage and delivery for Project purposes. This includes, but is not necessarily limited to: (1) The sites of all Project features and facilities (such as dams, reservoirs, canals, drains, pumping plant/stations) and areas adjacent to those sites that are subject to Reclamation's ownership, management or control; (2) lands that receive Project irrigation or drainage water; and (3) areas adjacent to Clear Lake, Gerber Reservoir, Miller Creek, Lost River, Tule Lake, Lower Klamath Lake, Upper Klamath Lake, Link River, Lake Ewauna, and the Klamath River downstream from Link River Dam subject to fluctuating water levels and/or flows that result from Project operation.

Summary

Reclamation is redirecting its planning and EIS efforts to address a multiyear operations plan. The scope, magnitude, and intensity of the efforts required to develop alternatives in a different manner will be clarified in the EIS. In so doing, additional time may be necessary to develop and analyze the effects of the actions and to complete the EIS.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 24, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–10983 Filed 5–2–03; 8:45 am]

BILLING CODE 4310–MN–U

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–11068] et al.

Prohibited Transaction Exemption 2003–07; Grant of Individual Exemptions; Archer Daniels Midland Company (Archer)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Archer Daniels Midland Company (Archer), Located in Decatur, Illinois

[Prohibited Transaction Exemption 2003–07; Exemption Application No. D–11068]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Agrinational Insurance Company (Agrinational) in connection with insurance contracts sold by Minnesota Life Insurance Company (Minnesota Life), or any successor insurance company to Minnesota Life which is unrelated to Archer, to provide basic and supplemental life insurance benefits to participants in Archer's programs to provide such benefits to its employees (the Plans),[1] provided the following conditions are met:

(a) Agrinational—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Archer that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended; (4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Agrinational, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Minnesota Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plans only contract with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and Agrinational will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plans should Agrinational be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) Agrinational retains an independent fiduciary (the Independent Fiduciary), at Archer's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Archer or Agrinational (this relationship hereinafter referred to as an ''Affiliate'');

(2) Is not an officer, director, employee of, or partner in, Archer or Agrinational (or any Affiliate of either);

(3) Is not a corporation or partnership in which Archer or Agrinational has an ownership interest or is a partner;

(4) Does not have an ownership interest in Archer or Agrinational, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''Independent Fiduciary,'' no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Archer, Agrinational, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Archer, Agrinational, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003 at 68 FR 10043.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

G.D. Castillo, M.D., Ltd, Profit Sharing Plan (the Plan), Located in Savoy, Illinois

[Prohibited Transaction Exemption 2003–08; Exemption Application Number D–11107]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the

[1] Each Plan will be considered an ''employee welfare benefit plan'' as defined in section 3(1) of the Act.

sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 23, 1999, to the sale of two parcels of unimproved real property (the Properties) by the Plan to Doctor G.D. Castillo (the Sales), a party in interest with respect to such Plan, provided that the following conditions are met: [2]

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property was not less than the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

Written Comment

The Department received one comment letter from an accountant (the Commenter) representing Doctor G.D. Castillo (Dr. Castillo) in response to the proposed exemption. In the letter, the Commenter noted that in addition to the Sales, the initial application (see footnote 1 above) requested relief for the acquisition (the Acquisition) of certain improved real property located in Golden, Colorado (the Improved Property) by the Plan and Dr. Laura Diaz Del Castillo Vraney (Dr. Vraney), the daughter of Dr. Castillo.[3]

In the initial application, Dr. Castillo stated that the purpose of Dr. Vraney's participation in the Acquisition was to enable the Plan to acquire a suitable investment. In this regard, Dr. Castillo represented that he directed the Plan to acquire the Improved Property upon extensively researching improved real properties located in areas of high growth. In a letter to the Department dated April 27, 2001, Dr. Castillo stated that, subsequent to the Acquisition, he has retained control over all decisions relating to the Improved Property. In addition, Dr. Castillo has represented that Dr. Vraney's role with respect to such property is limited to that of a passive investor.

The Commenter seeks clarification from the Department regarding whether the acquisition of the Improved Property by the Plan and Dr. Vraney requires additional exemptive relief. As the Department noted in the preamble to a proposed individual exemption (52 FR 30965, 30973 (August 18, 1987)), section 406(a)(1)(D) of the Act prohibits the transfer to, or use by or for the benefit of, a party in interest (including the daughter of a plan fiduciary), of the assets of a plan. The Department further stated that section 406(a)(1)(D) is not violated merely because the party in interest may derive some incidental benefit from a transaction involving the simultaneous equity investment in an asset with the plan. We are assuming, for purposes of this analysis, that: (1) The fiduciary (or its designee) does not rely upon, and is not otherwise dependent upon, the participation of the plan in order to undertake its share of the investment; and (2) the terms of the transaction that are applicable to the plan are identical to the terms applicable to the party in interest.

Thus, with respect to the acquisition of the Improved Property through the co-investment of Plan assets and assets provided by Dr. Vraney, to the extent that the initial co-investment satisfied the criteria described above, it is the view of the Department that such transaction does not require additional relief pursuant to this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 22, 2003 at 68 FR 3046.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of April, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–11011 Filed 5–2–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10992, et al.]

Proposed Exemptions; Local 705 International Brotherhood of Teamsters Pension Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the

[2] The application for this exemption, which was filed on January 19, 2001, was initially assigned the number D–10967 before being reassigned the above-referenced application number on July 22, 2002.

[3] On August 27, 1999, the Plan (at the direction of Dr. Castillo) and Dr. Vraney acquired the Improved Property from an unrelated third party for $690,000. Of this amount, the Plan paid $650,253.20 and Dr. Vraney paid $36,746.80.

exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. __, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov'',* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Local 705 International Brotherhood of Teamsters Pension Plan (the Plan) Located in Chicago, Illinois

[Application No. D–10992]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase of a 10 ft. x 52.6 ft. parcel of real property (the Property) by the West Side Realty Corporation (West Side), a wholly owned affiliate of the Plan from Local 705 Building Corporation (the Building Corporation), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The purchase of the Property by the Plan is a one-time transaction for cash;

(b) The Plan pays no more than the lesser of: (i) $147,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified, real estate appraiser that is unrelated to the Building Corporation or any other party in interest with respect to the Plan;

(d) The Plan will not pay any commissions or other expenses with respect to the transaction; and

(e) The Townsend Group, Institutional Real Estate Consultants (the Townsend Group), acting as an independent, qualified, fiduciary for the Plan, determines that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a defined benefit plan. The approximate aggregate fair market value of the total assets of the Plan is $1,035,500,093. The percentage of the fair market value of the total assets of the Plan that is involved in the exemption transaction is .0001% as of April 12, 2001. The Plan has eight (8) trustees, four (4) of whom are selected by employers who are parties to collective bargaining agreements with the Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union) and four (4) of whom are selected by the Union. These eight (8) individuals who serve as trustees of the Plan also serve as directors of West Side, which is an Illinois corporation wholly owned by the Plan.

2. The Building Corporation, a nominee corporation controlled by the Union owns the Property which consists of a 10 ft. x 52.6 ft. parcel in Chicago, Illinois. In 1992, the Plan completed construction, at 1645 West Jackson Boulevard, Chicago, Illinois, of a multi-tenant office building which is owned by West Side and which is currently leased to the Union and many other tenants. Sometime thereafter, the Plan became aware that the multi-tenant office building encroached, in part, on the Property.

As a result, the Plan now proposes, through West Side, to purchase the Property from the Building Corporation. The Property is contiguous to other parcels owned by the Building Corporation, and the parties contemplate granting each other cross-easements for parking and ingress and egress over their respective parcels pursuant to a reciprocal easement agreement.[1]

3. The proposed purchase is in the interest of the Plan and its participants and beneficiaries since it resolves any concerns involving ownership boundaries between the Property and the multi-tenant office building. The applicant represents that the proposed purchase by the Plan from the Building Corporation is the most equitable and convenient method to resolve this matter. The purchase of the Property will enhance the future marketability of the Property and will avoid the expense of possible future litigation. The rights of the Plan participants and beneficiaries are adequately protected by the transaction in question. The Building Corporation has offered to sell the Property to the Plan for cash in the amount of $147,000.[2]

4. The Property was appraised by Michael S. MaRous, an employee of MaRous and Company (the Appraiser), a real estate appraisal firm located in Park Ridge, Illinois. The Appraiser

[1] The Department is providing no relief herein with respect to any prohibited transactions that may arise in connection with any cross-easement agreements.

[2] The Building Corporation has determined that a price of $147,000 in cash for the Property would be acceptable.

utilized a sales comparison methodology in valuing the Property. To develop the opinion of value, the Appraiser performed a complete appraisal process as defined by the Uniform Standards of Professional Appraisal Practice. The Appraiser concluded that the unencumbered fee simple interest in the Property would have a fair market value of approximately $402,300, as of July 17, 2001.

5. The Townsend Group has been appointed by the Plan trustees to act as an independent fiduciary for the Plan for purposes of the transaction. The Townsend Group is an institutional real estate consulting company based in Cleveland, Ohio. Townsend acknowledges and represents that in serving as an independent fiduciary, the Townsend Group is a fiduciary of the Plan within the meaning of section 3(21) of the Act. Townsend is familiar with the duties imposed on fiduciaries under the Act, including the requirement that a fiduciary act solely and exclusively in the interest of a plan's participants and beneficiaries. Townsend's familiarity with the Act stems from its provision of a diverse array of real estate consulting services to a large base of domestic pension funds, as well as through transactional assignments for other intuitional investors during the firm's history. The Townsend Group represents that it is an independent fiduciary and not an affiliate of, or related to, the entities involved in the subject transaction. In this regard, the Townsend Group certifies that less than one (1) percent of its annual income (measured on the basis of the prior year's income) comes from business derived from The Building Corporation and its affiliates.

7. The Townsend Group has reviewed all of the terms and conditions of the proposed purchase of the Property by the Plan.

Based of this review and analysis, the Townsend Group concluded that the transaction is in the best interests of the Plan and its participants and beneficiaries.

8. In summary, the applicant states that the transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The proposed purchase of the Property by the Plan is a one-time transaction for cash; (b) the Plan will not pay more than the lesser of either $147,000, or the fair market value of the Property as determined at the time of the transaction; (c) the fair market value of the Property was established by an independent, qualified, real estate appraiser; (d) the Plan will not pay any commissions or other expenses with respect to the transaction, other than the services of an independent fiduciary (as described herein); and (e) the Townsend Group, acting as the Plan's independent fiduciary, determined that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Skandinaviska Enskilda Banken AB (SEB) Located in Stockholm, Sweden

[Application No. D–11133]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[3]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 23, 2002, to: (1) The lending of securities that are assets of a plan (the Plan) to SEB's head office in Stockholm (the Borrower) in accordance with the conditions set forth below (the foregoing being Part One of this proposed exemption); and (2) the lending of securities, under certain exclusive borrowing arrangements, to the Borrower by Plans including commingled investment funds holding assets of such Plans with respect to which SEB or any of its affiliates is a party in interest; and (3) the receipt of compensation by SEB or any of its affiliates in connection with these exclusive borrowing transactions (the foregoing being Part Two of this proposed exemption).

[3] For the purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

This proposed exemption is subject to the conditions contained below in Sections II, III, and IV.

Section II. Conditions Applicable to Part One of the Proposed Exemption—Securities Lending Between Plans and the Borrower

(a) Neither the Borrower nor any of its affiliates has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets.

(b) Each Plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by persons other than the Borrower (or any of its affiliates), or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to or not less than 100 percent of the then market value of the securities lent. The collateral referred to in this exemption, shall in all cases, be in U.S. dollars or dollar-denominated securities or United States bank letters of credit and must be held in the United States.

(c) Each loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party.

(d) In return for lending securities, each Plan either

(1) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party.

(e) Each Plan receives at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to

purchase additional securities that the Plan would have received (net of tax withholdings)[4] had it remained the record owner of such securities.

(f) If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower delivers additional collateral, by the close of business on the following business day to bring the level of the collateral back to at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities.

(g) Prior to entering into a loan agreement, the Borrower furnishes to the independent fiduciary of the Plan who is making decisions on behalf of the Plan with respect to the lending of securities: (1) The most recently available audited statement of the Borrower's financial condition, (2) the most recent available unaudited statement of the Borrower's financial condition, and (3) a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statement that has not been disclosed to the Plan fiduciary.

Such representation may be made by the Borrowers' agreeing that each loan shall constitute a representation by the Borrower that there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(h) Each Loan Agreement and any securities loan outstanding may be terminated by the applicable Plan at any time, whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (1) the customary delivery period for such securities; (2) five business days; or (3) the time negotiated for such delivery by the Plan and the Borrower, whichever is lesser, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTE) 81–6 (43 FR 7527, January 23, 1981), as it may be amended or superseded.[5]

(i) In the event that the loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (h) above, then the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Borrower indemnifies the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate. Notwithstanding the forgoing, the Borrower may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then-current market value of the collateral, provided that such replacement is approved by the independent plan fiduciary.

(j) Each Plan maintains the situs of any Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1. However, the Borrower shall not be subject to the civil penalty, which may be assessed pursuant to section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the independent plan fiduciary fails to comply with the requirements of 29 CFR 2550.404(b)-1.

If the Borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the failure on the part of the Borrower to comply with the conditions of the proposed exemption.

Section III. Conditions Applicable to Part Two of the Proposed Exemption—Exclusive Borrowing Arrangements Between Plans and the Borrower

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The Borrower is a party in interest with respect to each Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, each Plan receives from the Borrower either (1) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (2) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (3) any combination of (1) and (2) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the applicable Plan that a percentage of the earnings on the collateral may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the applicable Plan a lending fee (the Lending Fee, together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and

[4] The Department notes that the Applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Borrower will always put the Plan in at least as good a position as it would have been in had it not loaned the securities.

[5] PTE 81–6 as amended at 52 FR 18754, May 19, 1987, provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to each Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, each Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than SEB or any affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as amended or superseded. Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of a Plan by an affiliate of the Borrower that is the trustee or custodian of such Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the day of the loan and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of a Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by each Plan or its designee, which may be SEB or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the applicable Borrowing Agreement. Such Borrowing Agreement shall give the applicable Plan title to the collateral until such collateral is redelivered to SEB pursuant to the terms of the Borrowing Agreement.

(i) Before entering into any Borrowing Agreement, the Borrower furnishes to the applicable Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) Each Borrowing Agreement contains a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) Each Plan receives the equivalent of all distributions made during the applicable loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings) [6] had it remained the record owner of the securities.

(l) Each Borrowing Agreement and any outstanding securities loans with respect thereto may be terminated by either party at any time without penalty (except for, if a Plan has terminated its Borrowing Agreement, the return to the Borrower of a *pro rata* portion of the Exclusive Fee paid by the Borrower to the Plan), whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the applicable Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the applicable Plan has the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan, except to the extent that such losses or damages are caused by the Plan's own negligence.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States and/or Sweden, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which

[6] *See* Footnote 2, infra.

entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted (and the notice of pendency), are provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[7]

(q) The independent fiduciary of each Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the relevant Borrower. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of a Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of a Plan, the relevant Borrower will provide the Plan with daily confirmations of securities lending transactions.

Section IV. General Conditions

(a) In addition to the conditions set forth above in sections II and III of this proposed exemption, all loans involving the Borrower must satisfy the following supplemental requirements:

(1) The Borrower is a bank which is subject to regulation by the Swedish Financial Supervisory Authority (Finansinspektionen) (the SFSA).

(2) The Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934, as amended (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements.

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded).

(4) All collateral is held in the United States and the situs of the applicable Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

(5) Prior to entering into a transaction involving the Borrower, the Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Borrower will occur in the United States courts.

(b) The Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (c)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SEB and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (c)(1). (c)(1) Except as provided in subparagraph (c)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) are unconditionally available at their customary location or examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (c)(1)(ii)-(c)(1)(iv) of this paragraph (c)(1) are authorized to examine the trade secrets of SEB or its affiliates or commercial or financial information which is privileged or confidential. (d) Prior to any Plan's approval of any transaction with the Borrower, the Plan is provided copies of the proposed and final exemptions covering the exemptive relief described herein.

Section V. Definitions

(a) An ''affiliate'' of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director

[7] The Department notes the SEB representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, SEB will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to either a general securities lending arrangement or an exclusive borrowing arrangement. However, SEB or its affiliates may monitor the level of collateral and the value of the loaned securities.

or employee, or in which such person is a partner.

(b) For purposes of the securities lending arrangements described in Part One of this exemption, the term ''Borrower'' includes SEB and any other current or future non-U.S. broker-dealer or bank affiliate of SEB. For purposes of the exclusive borrowing arrangements described in Part Two of this exemption, the term ''Borrower'' includes SEB and any other affiliate of SEB that now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or U.S. bank.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of October 23, 2002.

Summary of Facts and Representations

1. SEB (the Applicant), one of the principal Swedish banking institutions and one of the largest banking institutions in Europe, is regulated by the Swedish Financial Supervisory Authority (Finansinspektionen) (the SFSA). As of December 31, 2001, SEB (Consolidated Balance Sheet) had approximately $111,246,000,000 USD in assets and $4,236,000,000 USD in stockholder's equity. SEB currently conducts its securities borrowing and lending activities principally through its head office in Stockholm. Under the European laws applicable to banks, SEB is authorized to engage in a broad range of financial services, including acting as a securities broker or dealer. With respect to the transactions described herein, SEB will not act as a lending agent.

2. The Borrower, acting as principal, actively engages in the borrowing and lending of securities. The Borrower utilizes borrowed securities either to satisfy its own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Applicant represents that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

The largest holding of equities, both domestic as well as international, are to be found in the United States. Currently, SEB can only access ERISA Plan assets by borrowing through a U.S. bank and/or broker-dealer which substantially increases the cost of borrowing. By being able to borrow directly, SEB can reduce this cost. SEB's more efficient presence in the ERISA marketplace should increase the base of potential borrowers which ERISA Plans can access, thus, also benefitting the Plans.

3. SEB represents that it is regulated and supervised by the SFSA. The SFSA supervises the worldwide business of SEB (head office and branches). In addition, in jurisdictions outside the European Economic Area, the business of SEB is subject to supervision by the local regulators. The SFSA has the power to license banks (with the exception for cases of special importance where license is granted directly by the Government) in Sweden. The SFSA also has the power to issue warnings and directives to address violations by or irregularities involving banks, to require information from a bank or its auditor regarding supervisory matters and to revoke bank licenses. SEB also states that the SFSA ensures that SEB has procedures for monitoring and controlling SEB's worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, risk management, recordkeeping, and administration and financial resources. SEB further states that it is required to provide the SFSA on a recurring basis with information regarding capital adequacy,[8] country risk exposure and foreign exchange exposures as well as periodic, consolidated financial reports on the financial condition of SEB and its affiliates. The SFSA continuously conducts inspections and examinations with respect to the SEB business. The SFSA will appoint one or more auditors to participate in the audit of the bank together with the auditors elected by the General Meeting of Shareholders.

Although SEB is not a broker-dealer registered with the SEC, SEB has a Swedish broker-dealer license which is included in the banking license. SEB represents that its broker-dealer activities are governed by the rules and regulations of SFSA. Further, SEB is a member of the self regulatory organization Swedish Securities Dealer's Association (SSDA) and is accordingly subject to the rules and membership requirements imposed by SSDA.

4. The Applicant further represents that the Borrower is subject to the rules of SFSA relating to, among other things, minimum capitalization, reporting requirements, periodic examinations. In addition, the Applicant states that SFSA rules impose reporting requirements with respect to risk management, internal controls, and transaction reporting and record-keeping requirements. In this regard, required records must be produced at the request of SFSA at any time. The Applicant further states that the rules and regulations of SFSA are backed up by potential fines and penalties as well as rules which establish a comprehensive disciplinary system.

5. The Applicant represents that in addition to the protections afforded by the SFSA, compliance by the Borrower with the requirements of Rule 15a–6 of the 1934 Act (and the amendments and interpretations thereof) will offer further protections to the Plans.[9] SEC Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association,

[8] The rules for capital adequacy are applicable to each company and on all consolidation levels within the SEB Group with a license to conduct banking, investment, leasing, mortgage, or security business. Insurance business is excluded since special laws apply to insurance activity. In addition, the capital adequacy regulation is applicable to the financial group of undertakings (i.e., most of the companies in the SEB Group which are not involved in the insurance business, and credit institutions which are consolidated in the financial group of undertakings).

[9] According to the Applicant, section 3(a)(4)(A) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others.'' Banks engaging in certain enumerated activities are excepted from the definition of ''broker.'' Section 3(a)(4)(B) of the 1934 Act. Section 3(a)(5)(C) of the 1934 Act provides a similar exception for ''banks'' engaging in certain activities from the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term ''foreign broker or dealer'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the Borrower is willing to represent that it will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term ''major U.S. institutional investor'' is defined as a person that is a U.S. institutional investor that has total assets in excess of $100 million or accounts managed by an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[10] The Applicant represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

6. The Applicant represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 [11] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by SEC Rules l7a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection-Reserves and Custody of Securities); and

(6) Participate in certain oral communications (*e.g.*, telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. (See April 9, 1997 No-Action Letter.)

7. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (*e.g.*, from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the Borrower deposits cash collateral, and the lender invests the collateral, then the applicable borrowing agreement may provide that the lender pay the Borrower a previously-agreed upon amount or rebate fee and keep the excess of the earnings on the collateral over the rebate fee as compensation. If the Borrower deposits government securities, the Borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the Borrower deposits irrevocable bank letters of credit as collateral, the Borrower pays the lender a fee as compensation for the loan of its securities. These fees, defined below as the Transaction Lending Fee, may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

Securities Lending Between Plans and the Borrower

8. SEB requests exemptive relief, effective October 23, 2002, for the lending of securities, equivalent to that provided under the terms and conditions of PTE 81–6, a class exemption permitting certain loans of securities by Plans. However, since PTE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue herein (with the Borrower, acting as principal, and engaging in the borrowing and lending of securities, typically foreign securities from institutions, including Plans) may fall outside the scope of relief provided by PTE 81–6.

9. The Borrower represents that it will utilize borrowed securities to either satisfy its own trading requirements or to re-lend to other affiliates and entities which need a particular security for a certain period of time. The Applicant represents that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that the Borrower is required to deliver, and SEB represents that foreign broker-dealers and banks are the most likely entities that seek to borrow foreign securities. Thus, the proposed exemption will increase the lending demand for such securities and provide the Plans with increased securities lending opportunities.

10. Neither the Borrower nor any of its affiliates has or shall have discretionary authority or control with respect to the investment of Plan assets involved in a transaction or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to such assets.

11. Each Plan will receive, from the Borrower, either by physical delivery, book entry in a securities depository located in the United States, wire transfer or similar means, by the close of business on the day the loaned securities are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable U.S. bank letters of credit issued by persons other than the Borrower (or any of its affiliates) or any combination thereof, having, as of the close of trading on the preceding business day, a market value (or, in the

[10] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by a Securities and Exchange Commission No-Action letter. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997, expanding the definition of ''Major U.S. Institutional Investor'' (the April 9, 1997 No-Action Letter).

[11] If it is determined that applicable regulation under the 1934 Act does not require SEB or the Borrower to comply with Rule 15a–6, both entities will, nevertheless, comply with subparagraphs (a) and (b) of Representation 6.

case of letters of credit, a stated amount equal to same) equal to or not less than 100 percent of the then market value of the securities lent. (The collateral referred to in this Representation will be in U.S. dollars or dollar-denominated securities or U.S. bank irrevocable letters of credit and will be held in the United States.)

12. Each loan will be made pursuant to a written Loan Agreement which may be in the form of a master agreement covering a series of securities lending transactions. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Borrower pay all transfer fees and transfer taxes relating to the securities loans.

13. In return for lending securities, each Plan will either (a) receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Borrower if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

14. Each Plan shall receive at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings). The Department notes the Applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and the Borrower will always put the Plan back in at least as good a position as it would have been in had it not lent the securities and remained the record owner of such securities.

15. If the market value of the collateral as of the close of trading on a business day in a certain transaction falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Borrower will deliver additional collateral, by the close of business on the following business day to bring the level of the collateral back to at least 100 percent. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities. Matters relating to the return of the collateral, the substitution of collateral and the termination of loans, will be determined by applicable provisions of the Loan Agreement.

16. Prior to the making of any securities loan, the Borrower will furnish to the independent fiduciary for the Plan who makes decisions on behalf of the Plan with respect to lending of securities (a) the most recently available audited and unaudited statements of such entity's financial condition, and (b) a representation from the Borrower that, as of each time such entity borrows securities, there has been no material change in the financial condition of such entity since the date of the most recently furnished financial statement that has not been disclosed to the Plan.

17. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of a reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the time period specified by PTE 81–6 as it may be amended from time to time.

18. In the event that a loan is terminated and the Borrower fails to return the borrowed securities, or the equivalent thereof, within the time described in Representation 18 above, the Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the Loan Agreement and any expenses associated with replacing the borrowed securities. The Borrower shall indemnify the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate.

Notwithstanding the foregoing, the Borrower may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the current market value of the collateral, provided that, such replacement is approved by the independent Plan fiduciary.

19. Each Plan will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, the Borrower will not be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)–1.21.

Exclusive Borrowing Arrangements Between Plans and the Borrower

20. The Borrower also requests an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which SEB or any of its affiliates is a party in interest, for example, by virtue of its providing investment management, custodial, or other services to such Plans. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.[12] However, because the Borrower, by exercising its contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrower, the lending of securities to the Borrower may be outside the scope of relief provided by PTE 81–6.

Generally, the Borrower is a party in interest with respect to Plans, if at all, solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider under section 3(14)(F), (G), (H), or (I) of the Act.

21. For each Plan, the Borrower will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrower. Under the Borrowing Agreement, the Borrower will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrower pay all

[12] Condition 1 of PTE 81–6 requires, in part, that neither a borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the applicable plan assets involved in the transaction.

transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

22. The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

23. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay each Plan either (a) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement), (b) a periodic payment that is equal to a percentage of the value of the total balance outstanding on the borrowed securities, or (c) any combination of (a) and (b) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the applicable Plan that a percentage of the earnings on the collateral may be retained by such Plan or such Plan may agree to pay the Borrower a rebate fee and retain the excess of the earnings on the collateral over the rebate fee paid by such Plan to the Borrower (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral will be returned to the Borrower and the Borrower may, but shall not be obligated to, agree to pay the applicable Plan a lending fee (the Lending Fee, together with the Shared Earnings Compensation, the Transaction Lending Fee). The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to a Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

24. By the close of business on or before the day the loaned securities are delivered to the Borrower, each Plan will receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by U.S. banks other than SEB or its affiliates, or other collateral permitted under PTE 81–6 (as amended or superseded). Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of a Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan. The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The independent fiduciary of each plan or its designee, which may be SEB or any of its affiliates, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent.

If the Borrower deposits cash collateral, and the Plan invests the collateral, then all earnings on such cash collateral shall be returned to the Borrower; provided that the applicable Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan or the excess of the earnings on the collateral over a rebate fee paid by the Plan to the Borrower. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of comparable arm's length transactions between unrelated parties taking into account the exclusive arrangement, and will be based upon an objective methodology which takes into account several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the Federal Reserve (the Federal Funds), the overnight REPO [13] rate, or the like) and anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan. If the Borrower deposits non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower is entitled to the earnings on its non-cash collateral and the Plan may receive a Lending Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

The Borrower will provide a monthly report to each such Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the Borrower and the aggregate market value of the collateral.

25. Before entering into a Borrowing Agreement, the Borrower will furnish to each Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the applicable independent fiduciary to determine whether the Plan should enter into or renew the applicable Borrowing Agreement. Further, the Borrowing Agreement will contain a representation by the Borrower that as of each time it

[13] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

26. Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted, (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.

27. With regard to those Plans for which SEB or any of its affiliates provides custodial, clearing and/or reporting functions relative to securities loans, SEB and a Plan fiduciary independent of SEB and its affiliates, will agree in advance and in writing to any fee that SEB or any of its affiliates is to receive for such services. Such fees, if any, would be fixed fees (*e.g.*, SEB or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee SEB or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for SEB or any of its affiliates to provide such functions relative to securities loans to the Borrower will be terminable by the Plan within five (5) business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrower of a *pro rata* portion of the Exclusive Fee paid by the Borrower to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrower.

28. Each Borrowing Agreement and any outstanding securities loans with respect thereto may be terminated by either party at any time without penalty (except for, if a Plan has terminated its Borrowing Agreement, the return to the Borrower of a *pro rata* portion of the Exclusive Fee paid by the Borrower to the Plan). Upon termination of any securities loan, the Borrower will return the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

If the Borrower fails to return the securities or the equivalent thereof within the designated time, the applicable Plan will have certain rights under the Borrowing Agreement to realize upon the collateral. In the event that the Borrower defaults on a loan, the independent fiduciary of the Plan or its agent will have the right to liquidate the loan collateral to purchase identical securities for the Plan. If the collateral is insufficient to accomplish such purchase, the Borrower will indemnify the Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including reasonable attorney's fees of the Plan for legal actions arising out of the default on the loans or failure to properly indemnify under such provisions). Alternatively, if such replacement securities cannot be obtained on the open market, the Borrower shall pay the Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the Borrower's breach of its obligation to return the loaned securities.

29. In the event the Borrower fails to return securities in accordance with a Borrowing Agreement, the applicable Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan except to the extent that such losses or damages are caused by the Plan's own negligence.

30. Except as provided herein, all the procedures under each Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States and Sweden, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(a) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(1) Has full investment responsibility with respect to plan assets invested therein; and

(2) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

The Applicant represents that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrower under the flexible fee

structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

Supplemental Requirements

31. In addition to the conditions set forth in Parts One and Two of the proposal, all loans involving the Borrower must satisfy the following supplemental requirements:

(a) The Borrower is a bank which is subject to regulation by the SFSA.

(b) The Borrower is in compliance with all applicable provisions of Rule 15a–6 under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements.

(c) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded).

(d) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

(e) Prior to entering into a transaction involving the Borrower, the Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by SEB or the Borrower will occur in the United States courts.

32. The Applicant represents that only English or New York law securities lending agreements will be used. Such agreements provide for submission to English or New York courts. As a result, the Applicant expects judgments to be obtained under English law or New York law, depending on the form of securities lending agreement used.

According to the Applicant, if collateral provided by SEB in connection with the relevant securities lending transaction is located in the United States, the Plan can exercise its set-off rights under a securities lending agreement governed by English law, or it may foreclose on the collateral and apply the proceeds of such foreclosure to satisfy SEB's obligations under a securities lending agreement governed by New York law. All collateral pertaining to this exemption will be held in the United States.

If for any reason there is no collateral available in connection with the relevant securities lending transaction, the Applicant states that the Plan may seek to enforce a judgment from a New York court or English court against the assets located in the United States of SEB's New York branch. A judgment from a New York court can be enforced in New York, or any sister state pursuant to the ''Full Faith and Credit'' clause of the U.S. Constitution and the Implementing Act of 1790. Almost all states have adopted the Uniform Enforcement of Foreign Judgments Act, which provides for either filing or registration of sister state judgments.

The Applicant represents that a foreign money judgment from an English court can be enforced in any state where the property of SEB or SEB's New York branch may be attached as a basis of jurisdiction. Foreign judgments are recognized and enforced pursuant to the relevant state law which will either be based on common law or the Uniform Foreign Money-Judgments Recognition Act, which provides that foreign country money judgments that are final, conclusive, and enforceable where rendered will be enforceable in the same manner as a judgment of a court of a sister state which is entitled to ''Full Faith and Credit.'' The State of New York, as well as 30 other states, has adopted the Uniform Foreign Money-Judgments Recognition Act. Thus, the Applicant concludes that the Plan can bring an enforcement action, under an expedited procedure, on a foreign money judgment in New York to attach the assets of SEB's New York branch located in New York.

33. In addition to the protections cited above, the Borrower will maintain, or cause to be maintained, within the United States for a period of six years from the date of a transaction, such records as are necessary to enable the Department and others to determine whether the conditions of the exemption have been met.

34. In summary, the Applicant represents that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Borrower has negotiated or will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans have been permitted or will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower has paid or will pay each Plan the Exclusive Fee, which as discussed above may be either (1) a flat fee (which may be equal to a percentage of the value of the total securities subject to the applicable Borrowing Agreement), (2) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (3) any combination of (1) and (2). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral have been returned or will be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the applicable Plan that such Plan receive Shared Earnings Compensation, which as discussed above may be a percentage of the earnings on the collateral and may be retained by such Plan or the excess of the earnings on the collateral over the rebate fee paid by such Plan to the Borrower. The Shared Earnings Compensation, if any, shall be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Shared Earnings Compensation may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the applicable Borrowing Agreement;

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan has required or will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower has provided or will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially has been or will be at least 102 percent of the market value of

the loaned securities and will be monitored daily by each independent fiduciary;

(g) Each Borrowing Agreement and any outstanding securities loans with respect thereto has been terminated or will be terminated by either party at any time without penalty, except for the return to the Borrower of a *pro rata* portion of the Exclusive Fee paid by the Borrower to the applicable Plan, and the Borrower has returned or will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to such Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates has or will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement has ensured or will ensure that the Plans have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) At a minimum, all the procedures have conformed or will conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States and Sweden, as appropriate.

Notice to Interested Persons

The Applicant represents that because those potentially interested Plans cannot all be identified, the only practical means of notifying such Plans of this proposed exemption is by publication in the **Federal Register**. Therefore, comments must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

Arizona Machinery Group, Inc. (AMG) Located in Avondale, Arizona

[Application No. D–11142]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Transactions Covered

If the exemption is granted, the restrictions of sections 406(a), (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (a) The acquisition by the Arizona Machinery Group Employees' Profit Sharing Retirement Plan (the Plan) of customer notes acquired from the Plan sponsor, AMG, or from any successor employer which sponsors the Plan at the time of the acquisition of such customer note, or from any other employer which at the time of the acquisition of such customer note has adopted the Plan (including employers which adopt the Plan subsequent to the proposed exemption being granted) and which generates customer notes as defined herein in section III (B), or from any affiliate of any such employer, (b) the Plan's holding of the customer notes, if the notes acquired and held by the Plan are guaranteed by the respective employer or affiliate, which accepted and held the customer notes prior to their acquisition by the Plan, as well as by AMG (when the customer note was accepted and held by an employer other than AMG); and (c) the repurchase of customer notes from the Plan by the employer or affiliate which initially transferred those notes to the Plan; provided that, with respect to each such transaction, the conditions set forth below in section II are met.

Section II. Conditions

(a) The transaction is on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

(b) Prior to the consummation of a transaction described in section I of this proposed exemption, the transaction is approved on behalf of the Plan by a qualified fiduciary who is independent of any of the sponsoring or adopting employers or affiliates of the employer(s) (Independent Fiduciary), upon a determination made by such Independent Fiduciary that the other conditions of this exemption will be satisfied. The Independent Fiduciary shall acknowledge his or her plan fiduciary status under the Act in writing with respect to the transactions. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by AMG or an adopting employer (or by a person with an interest in such employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary under the Act.

(c) The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this proposed exemption, shall be monitored and enforced on behalf of the Plan by the same or another Independent Fiduciary who is independent of any of the sponsoring or adopting employers and who has acknowledged his or her fiduciary status and liability as described in paragraph (B) of this section. The Independent Fiduciary shall be responsible for taking all appropriate actions necessary to protect the Plan's rights with regard to the safety and collection of the notes purchased by the Plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's or affiliates' guarantees to repurchase delinquent notes, with accrued interest, as described in paragraph (e) of this section.

(d) The acquisition of a customer note from AMG, an adopting employer, or an affiliate, shall not cause the Plan to hold immediately following the acquisition: (i) More than twenty-five percent (25%), in the aggregate, of the current value (as defined in section 3(26) of the Act) of Plan assets in customer notes of AMG, adopting employers or affiliates, or (ii) more than five percent (5%) of the current value of Plan assets in the notes of any one customer who is the obligor under such notes.

(e) An employer or affiliate from which the Plan acquires a customer note, as well as AMG (when the customer note was acquired from an employer other than AMG), guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary referred to in paragraph (b) and (c) of section II, impair the safety of the note as a Plan investment. The Independent Fiduciary may, at his or her discretion, grant an additional 30-day extension before repurchase of the note by an employer or affiliate is necessary upon a petition by the employer or affiliate, if the fiduciary determines, after consultation with the employer or affiliate, that such an extension is in the best interests of the participants and beneficiaries of the Plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note;

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or makes a bulk sale;

(3) Any proceeding, suit or action at law, in equity, or under any of the provisions of Title 11 of the United States Bankruptcy Code [11 U.S.C. 101 *et seq.*] or amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor;

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity; or

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(f) The Plan receives adequate security for the note. For purposes of this proposed exemption, the term ''adequate security'' means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be anticipated that loss of principal or interest will not result. In no event shall ''adequate security'' mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(g) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer or affiliate from which the Plan originally acquired the note, and the proceeds from such insurance will be assigned to the Plan.

(h) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term of the note shall in no event exceed 60 months. For purposes of this proposed exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be resold in the ordinary course of the equipment distributor's business;

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term of the note shall in no event exceed 48 months. For purposes of this proposed exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation; and

(3) Where the note is secured by tangible personal property, other than heavy equipment or motor vehicles described in paragraph (h)(1) and (2) of this section, the term of the note shall in no event exceed 36 months.

(i) All records, information and data required to be maintained which relate to Plan investments in customer notes covered by this proposed exemption shall be unconditionally available at the customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Section III. Definitions

For purposes of this proposed exemption, the following definitions shall apply:

(a) The terms, ''affiliate'' or ''affiliates,'' mean, with respect to an employer of employees covered by the Plan, any corporation that is, at the time the Plan acquires a customer note, a member of a controlled group of corporations (as defined in section 407(d)(7) of the Act and section 1563(a) of the Code), along with AMG and any other adopting employer.

(b) The term ''customer note,'' means a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted and held in connection with, and in the normal course of, an employer's (or affiliates's) primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with an extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

(c) The term ''Independent Fiduciary'' means a person or entity which is qualified to serve in that capacity (*i.e.*, knowledgeable as to the duties and responsibilities as a fiduciary under the Act and knowledgeable as to the subject transaction) and which is independent of the party in interest engaging in the transaction and its affiliates.

(d) The terms ''employer'' or ''adopting employer'' mean those entities which currently sponsor, or in the future will sponsor, the Plan and who have, or will have, employees that are participants in the Plan, and are considered an ''employer'' as that term is defined in section 3(5) of the Act.

Summary of Facts and Representations

1. AMG is an Arizona corporation that deals in and services farming equipment and machinery. AMG sponsors the Arizona Machinery Group Employee's Profit Sharing Retirement Plan (*i.e.*, the Plan), which is a multiple employer plan with several adopting companies. Although all the adopting employers are related, only two employers (AMG and Arizona Machinery, L.L.C.) are members of a ''controlled group'' of companies pursuant to the applicable provisions of the Code.[14]

2. The Plan is a defined contribution profit sharing plan that was established in 1969. The trustee of the Plan, Mr. Roy Miller (the Trustee), is an Independent Fiduciary who will also be responsible for overseeing the proposed consolidated customer notes fund. The Plan provides pension benefits to approximately 161 active participants and 41 terminated vested participants. For the year ending December 31, 2001, net assets for the Plan totaled approximately $6,265,256. Effective as of January 1, 1993, the Plan established the AMCO Customer Notes Fund, which later became the AMG Customer Notes Fund (the AMG Notes Fund).[15] Currently, the AMG Notes Fund invests exclusively in customer notes purchased from AMG. As of December 31, 2001, the Plan had approximately twenty-nine percent (29%) of the fair market value of its total assets invested in the AMG Notes Fund.

3. The Plan provides for individual participant accounts and permits participants (or beneficiaries, where applicable) to exercise investment control over the assets in their

[14] As of the date of this proposed exemption, five related companies have adopted the Plan. The applicant states that the requisite level of common ownership does not exist among the remaining adopting employers for them to constitute a ''controlled group'', as that term is defined under section 1563(a) of the Code. In this regard, the Department notes that section 407(d)(7) of the Act states that a corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in 1563(a) of the Code, except that ''applicable percentage'' shall be substituted for ''80 percent'' wherever the latter appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term ''applicable percentage'' means 50 percent, or such lower percentage as the Secretary may prescribe.

[15] Effective April 1, 2002, Arizona Machinery Company, Inc. changed its name to ''Arizona Machinery Group, Inc.,'' and the name of the Plan was recently amended to reflect the new name of the Plan sponsor, and to reflect the new Plan name.

accounts.[16] The AMG Notes Fund is invested in customer notes relating to farming equipment and machinery that is sold by AMG to customers, who are persons or entities unrelated to AMG, in the ordinary course of its business as a dealer in such equipment and machinery.[17] The applicant represents that customers often purchase such items from AMG by giving AMG a note (*i.e.*, a ''customer note'' as defined herein). The applicant also represents that for several years the Plan has offered the AMG Notes Fund as one of several investment options available to participants who are employed by AMG. The other investment options available under the Plan consist of stock and bond mutual funds, a money market fund, and a real estate fund.

4. According to the applicant, the current operation of the AMG Notes Fund complies in all respects with the requirements of PTE 85–68.[18] The applicant represents that the AMG Notes Fund invests almost exclusively in customer notes purchased from AMG in accordance with PTE 85–68. In this regard, the applicant states that to the extent the amount directed into the AMG Notes Fund by the participants exceeds the amount of available customer notes, the Plan will invest the money in short-term interest bearing investments.

5. The applicant represents that the Independent Fiduciary for the Plan, Roy Miller (Mr. Miller), monitors the total amount invested in the AMG Notes Fund by each participant to ensure compliance with PTE 85–68. Mr. Miller is an experienced trust officer, having served for a number of years in pension and profit sharing trust management and administration with institutional trust departments of major banks, prior to being retained as a full-time trustee and independent fiduciary for the Plan pursuant to a federal court order and settlement involving transactions unrelated to the Plan's acquisition and holding of customer notes. Mr. Miller has served as the Plan's trustee and Independent Fiduciary, for purposes of acquiring and monitoring customer notes pursuant to PTE 85–68, since 1992.[19] The applicant states that Mr. Miller, as the Independent Fiduciary, continually monitors the customer notes held in the AMG Notes Fund to ensure that the notes are being repaid in accordance with PTE 85–68. The Independent Fiduciary performs a semi-annual review of all the customer notes including verification of the security for each note and compliance with the provisions of PTE 85–68. Additionally, the Independent Fiduciary must take appropriate action in order to safeguard Plan participants and beneficiaries in the event of a default of a customer note in the AMG Notes Fund. The applicant states that since the inception of the AMG Notes Fund in January 1993, there have been approximately 170 customer notes held by the Plan. None of these notes has incurred a default. However, the applicant states that two of the notes had become sufficiently delinquent so that AMG had to repurchase the notes from the Plan. With respect to these notes, AMG never had to make any payments on its guarantee to the Plan.

6. AMG and the Independent Fiduciary state that the AMG Notes Fund is a popular investment choice with AMG's employees that are participants in the Plan. As of December 31, 2001, approximately 29% of the Plan's total assets, or approximately $1,800,000, was invested in the AMG Notes Fund. The applicant states that Plan participant demand for customer notes is significantly higher than AMG's current supply of good quality notes. If the proposed exemption is granted, AMG, as Plan sponsor, will establish a new consolidated customer notes fund (the Consolidated Notes Fund) that would be available to all adopting employers of the Plan and their corporate affiliates. The applicant represents that the Consolidated Notes Fund would be preferable to additional individual customer notes funds for the Plan. In this regard, the Consolidated Notes Fund would be less complicated to administer, would reduce the Plan's overall administrative expenses, and would allow better geographic diversification for the notes vis a vis the underlying investments (*i.e.*, notes of various customers in different local economic regions).[20] Thus, the Consolidated Notes Fund would enhance the security of the Plan participants' overall investments in customer notes.

7. The applicant represents that each transaction will be on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

Prior to the consummation of any transaction described herein, the transaction will be approved on behalf of the Plan by an Independent Fiduciary. Such fiduciary will be independent of any of the sponsoring or

[16] The applicant represents that the Plan is a 404(c) plan, pursuant to the applicable provisions of the Act. Section 404(c) of the Act provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over assets in his or her account and that participant or beneficiary in fact exercises control over assets in his or her account, then the participant or beneficiary shall not be deemed a fiduciary by reason of his or her exercise of control and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control.

The Department is providing no opinion in this proposed exemption as to whether the Plan would be considered an ''ERISA section 404(c) plan'' pursuant to section 404(c) of the Act and the regulations thereunder (*see* 29 CFR 2550.404c–1).

The Department notes further that if a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his or her individual account, in the manner described in the regulations thereunder (*see* 29 CFR 2550.404c–1(c)), then no other person who is a fiduciary with respect to such plan shall be liable for any loss, or with respect to any breach of Part 4 of Title I of the Act, that is the direct and necessary result of that participant's or beneficiary's exercise of control. However, the regulations specify, in pertinent part, that this provision does not apply with respect to any instruction which, if implemented, would result in a direct or indirect sale, exchange, or lease of property between a plan sponsor or any affiliate of the sponsor and the plan except for the acquisition or disposition of any interest in a fund, subfund or portfolio managed by a plan sponsor or an affiliate of the sponsor, or the purchase and sale of any ''qualifying employer security'' (as defined in section 407(d)(5) of the Act) which meets the conditions of 408(e) of the Act and conditions specified further in such regulations (*see* 29 CFR 2550.404c–1(d)(2)(ii)(E)(4)).

[17] For purposes of the proposed exemption, the term ''customer note'' has the same meaning as set forth in Prohibited Transaction Exemption (PTE) 85–68, 50 FR 13293 (April 3, 1985). Section I of PTE 85–68 provides that a ''customer note'' is a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted in connection with, and in the normal course of, an employer's primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with the extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

[18] PTE 85–68 permits a plan to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. Among the conditions contained therein is a requirement that a plan may not invest more than 50% of its assets in customer notes and not over 10% of its assets in the notes of a single customer. In addition, there are maximum terms ranging up to five years that are imposed on the notes, depending on the type of property being financed.

[19] With respect to Mr. Miller's current role as the Plan's Independent Fiduciary, the applicant represents that if it becomes necessary in the future to appoint a successor Independent Fiduciary to replace Mr. Miller (the Successor), the applicant will notify the Department at least sixty (60) days in advance of the appointment of the Successor. The applicant states that the Successor will have the responsibilities, experience and independence similar to that of Mr. Miller.

[20] With respect to the appropriate Plan fiduciary's determination to offer a customer notes fund (*i.e.*, the Consolidated Notes Fund) as an investment choice for Plan participants, the Department notes that such decision would be subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act including, among other things, section 404(a)(1). In addition, once a customer notes fund is selected as an investment option for the Plan's participants, the responsible fiduciary's duties would include prudently selecting the customer notes to be included in the Consolidated Notes Fund as well as taking appropriate actions to protect the Plan's interest in connection with delinquent customer notes.

adopting employers, upon a determination made by the fiduciary that the other conditions of this exemption, if granted, will be satisfied. The Independent Fiduciary will acknowledge, in writing, his or her plan fiduciary status under the Act for each transaction. A person will be independent of an employer, even though he or she was selected by an adopting employer (or by a person with an interest in such employer), if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary under the Act.

8. The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this proposed exemption, will be monitored and enforced on behalf of the Plan by the same or another Independent Fiduciary who is independent of any of the sponsoring or adopting employers and who has acknowledged his or her fiduciary status and liability as described herein. The Independent Fiduciary will be responsible for taking all appropriate actions necessary to protect the Plan's rights with regard to the safety and collection of the notes purchased by the Plan. These actions will include: (i) Ascertaining that payments are received timely; (ii) diligently pursuing the receipt of delinquent payments; and (iii) enforcing the employer's or affiliates' guarantees to repurchase delinquent notes, with accrued interest.

9. The acquisition of a customer note from a Plan sponsor, an adopting employer, or an affiliate, will not cause the Plan to hold, immediately following the acquisition, more than: (i) twenty-five percent (25%), in the aggregate, of the current value of the Plan's assets in customer notes of such Plan sponsor, adopting employers or affiliates, or (ii) five percent (5%) of the current value of the Plan's assets in the notes of any one customer who is the obligor under such notes.

The employer or affiliate from which the Plan acquires a customer note, as well as AMG (when the customer note was accepted and held by an employer other than AMG), will guarantee in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary, will impair the safety of the note as a Plan investment. The Independent Fiduciary may, at his or her discretion, grant an additional 30-day extension before repurchase of the note by an employer or affiliate is necessary upon a petition by the employer or affiliate, if the fiduciary determines, after consultation with the employer or affiliate, that such an extension is in the best interests of the participants and beneficiaries of the Plan. Other events of impairment will include:

(a) The obligor on the note fails to comply with any terms or conditions of the note;

(b) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or makes a bulk sale;

(c) Any proceeding, suit or action at law, in equity, or under any of the provisions of the Bankruptcy Code, or amendments thereto, for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor;

(d) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity; or

(e) The obligor fails to take proper care of or abandons the property being financed by the note.

The Plan will receive adequate security for each note. In this regard, the term ''adequate security'' will mean that each note will be secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result. However, in no event will the term ''adequate security'' mean an interest in intangible personal property, such as accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer or affiliate which originally sold the note to the Plan, and the proceeds from such insurance will be assigned to the Plan.

Repayment will be provided for in the following manner:

(a) Where the note is secured by heavy equipment, the term of the note will not exceed 60 months. For purposes of this proposed exemption, heavy equipment will include machinery sold by equipment distributors such as earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications. However, heavy equipment will not include any equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be resold in the ordinary course of the equipment distributor's business;

(b) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term of the note will not exceed 48 months. For purposes of this proposed exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation; and

(c) Where the note is secured by tangible personal property, other than heavy equipment or motor vehicles as described herein, the term of the note will not exceed 36 months.

10. In summary, the applicant represents that the proposed exemption will satisfy the statutory criteria under section 408(a) of the Act for the following reasons:

(a) Each transaction will be on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party;

(b) Prior to the consummation of any transaction described herein, the transaction will be approved on behalf of the Plan by an Independent Fiduciary, upon a determination made by such Independent Fiduciary that all of the conditions of this proposed exemption will be satisfied. The Independent Fiduciary will acknowledge, in writing, his or her fiduciary status for the Plan under the Act with respect to each transaction;

(c) The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this proposed exemption, will be monitored and enforced on behalf of the Plan by an Independent Fiduciary, as described herein;

(d) The acquisition of a customer note from either AMG, an adopting employer, or an affiliate, will not cause the Plan to hold, immediately following the acquisition, more than: (i) twenty-five percent (25%), in the aggregate, of the current value of the Plan's assets in customer notes of AMG, adopting employers or affiliates, or (ii) five percent (5%) of the current value of the Plan's assets in the notes of any one customer who is the obligor under such notes;

(e) The employer or affiliate from which the Plan acquires a customer note, as well as AMG, will guarantee in writing the immediate repayment of the outstanding balance of the notes, and accrued interest thereon, in the event

that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary, will impair the safety of the note as a Plan investment; and

(f) The Plan will receive adequate security for each note. Additionally, insurance against loss or damage from fire or other hazards to the collateral underlying each note will be procured and maintained by the obligor until the note is repaid or repurchased by the employer or affiliate which originally sold the note to the Plan, and the proceeds from such insurance will be assigned to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Brian J. Buyniski of the Department, telephone (202) 693–8545. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of April, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–11012 Filed 5–2–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Advisory Committee on Apprenticeship (ACA).

Time and Date: The meeting will begin at 8:30 a.m. on Wednesday, May 21, 2003, and continue until approximately 3 p.m. The meeting will reconvene at 9 a.m. on Thursday, May 22, 2003, and continue until approximately 5 p.m.

Place: Loews L'Enfant Plaza Hotel, Meeting Room Monet 3 & 4, 480 L'Enfant Plaza, SW., Washington, DC 20024.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Matters to Be Considered: The agenda will focus on the following topics:

(1) Reestablishment of the Advisory Committee on Apprenticeship;

(2) Advisory Committee Procedures/ Ethics;

(3) Preparation of the American Workforce for sustained employment and training programs; and

(4) Implementation Plan for Advancing Apprenticeship.

Status: Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 693–3786 no later than May 13, 2003, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending them to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions should be sent by May 8, 2003, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. Anthony Swoope, by May 8, 2003. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 29th day of April, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 03–10968 Filed 5–2–03; 8:45 am]

BILLING CODE 4510–30–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Comment Request, Study of User Needs; Assessment in Digitization

AGENCY: Institute of Museum and Library Service, National Foundation for the Arts and the Humanities

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection

instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before 60 days after this posting. IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Martha Crawley, Senior Program Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Crawley can be reached on Telephone: 202–606–5513, Fax: 202–606–1077 or by e-mail at *mcrawley@imls.gov*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant Program, IMLS funds the digitization of library and museum collections.

Agency: Institute of Museum and Library Services.

Title: Study of User Needs Assessment in Digitization.

OMB Number: n/a.

Agency Number: 3137.

Frequency: Multiple times.

Affected Public: Museums and Libraries that created digital collections with IMLS funding.

Number of Respondents: 120 (and approximately 60 expected from 2003, 2004, and 2005 grant awardees).

Frequency of response: One time each Estimated time per respondent: 25 minutes.

Estimated cost per respondent: $20.83 (50 min x $25 per hour).

Total Burden Hours: 150 hours.

Total Annualized capital/startup costs: Zero.

Total Annual costs: $3,125.

Contact: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: April 28, 2003.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 03–10948 Filed 5–2–03; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

April 30, 2003.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on May 15–16, 2003.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on May 15–16, 2003, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on February 27, 2003 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.
Federal/State Partnership—Room 507
Public Programs—Room 420
Research Programs—Room 315

(Closed to the Public)

Discussion of specific grant applications and programs before the Council

10:30 a.m. until Adjourned
Federal/State Partnership—Room 507
Public Programs—Room 420
Research Programs—Room 315

2–3:30 p.m.
Jefferson Lecture—Room 527

The morning session on May 16, 2003 will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Reports on Policy and General Matters
a. Overview
b. Research Programs
c. Public Programs
d. Federal/State Partnership
e. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr. Daniel C. Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special

needs or accommodations is appreciated.

Daniel C. Schnieder,

Advisory Committee, Management Officer.

[FR Doc. 03–10947 Filed 5–2–03; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47733; File No. 4–208]

Intermarket Trading System; Order Granting Approval of the Twentieth Amendment to the ITS Plan Relating to the Recognition of the Use by the Chicago Board Options Exchange, Inc. of the Regional Computer Interface and the Description of Commitment Acceptance Applicable to Specialists of the Boston Stock Exchange, Inc.

April 24, 2003.

On March 14, 2003, the Intermarket Trading System Operating Committee (''ITSOC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 11A3a3–2 thereunder,[2] a proposed amendment (''Twentieth Amendment'') to the restated ITS Plan.[3] The proposed amendment recognized the use by the Chicago Board Options Exchange, Inc. (''CBOE'') of the Regional Computer Interface (''RCI''); and revised the description of commitment acceptance applicable to specialists of the Boston Stock Exchange, Inc. (''BSE''). Notice of the proposed amendment appeared in the **Federal Register** on April 3, 2003.[4] The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act,[5] and Rule 11A3–2(c)(2) thereunder,[6] which require among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfect the mechanisms of, a national market system. Specifically, the Commission believes that the plan amendment should enable the CBOE to use the communications network that links all the Participant markets. Further, the Commission believes that the proposed amendment clarifies in the ITS Plan those instances where an ITS transaction will be represented by one or more BSE Registered specialists.

It is therefore ordered, pursuant to section 11A(a)(3)(B) of the Act,[7] that the proposed Twentieth Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11013 Filed 5–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (''Amex''), BSE, CBOE, the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants'').

[4] *See* Securities Exchange Act Release No. 47578 (March 26, 2003), 67 FR 16319.

[5] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[6] 17 CFR 240.11A3–2(c)(2).

[7] 15 U.S.C. 78k–1(a)(3)(B).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47753; File No. SR–CBOE–2001–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5, 6, 7, and 8 by the Chicago Board Options Exchange, Inc. To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Stocks Trading Under $20

April 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b-4 thereunder,[2] notice is hereby given that on December 12, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Exchange filed Amendments No. 1, 2, 3, 4, 5, 6, 7, and 8 to the proposed rule change on March 13, 2002,[3] June 21, 2002,[4] December 6, 2002,[5] March 7, 2003,[6] March 25, 2003,[7] April 16, 2003,[8] April 24, 2003,[9] and April 25, 2003,[10] respectively. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to initiate a one-year pilot program that would allow the listing of strike prices at one-point intervals where the underlying stock trades under $20 (''$1 Strike Pilot Program'' or ''Pilot Program''). The text of the proposed rule change appears below. Additions are in *italics.* Deleted text is in [brackets].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange provides additional information on the proposal, including information regarding Options Price Reporting Authority (''OPRA'') capacity.

[4] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Elizabeth King, Associate Director, Division, Commission, dated June 20, 2002 (''Amendment No. 2''). Amendment No. 2 discusses the need for $1 strikes and provides information regarding market data vendor capacity.

[5] *See* letter from Steve Youhn, Attorney, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated December 5, 2002 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposed to reduce the number of underlying stocks included in the pilot program to 25 and list only $1 strikes that fall within a $5 range of the underlying stock price.

[6] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated March 6, 2003 (''Amendment No. 4''). In Amendment No. 4, the Exchange proposed to: (1) Reduce the number of underlying stocks included in the pilot program to five stocks; (2) list $1 strike prices on options classes include in the $1 strike price program of other options exchanges; and (3) provide that the CBOE would not list Long Term Equity Option Series (''LEAPS'') in equity option classes at $1 strike price intervals.

[7] On March 25, 2003, the Exchange filed Amendment No. 5, which supercedes the original filing and Amendments No. 1, 2, 3, and 4 in their entirety.

[8] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 15, 2003 (''Amendment No. 6''). In Amendment No. 6, the Exchange made a correction to the proposed rule text and to the purpose section of the proposal.

[9] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 22, 2003 (''Amendment No. 7''). In Amendment No. 7, the Exchange submitted a revised Exhibit A to the proposed rule change, which replaces all previous versions of Exhibit A.

[10] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 25, 2003 (''Amendment No. 8''). In Amendment No. 8, the Exchange submitted a revised Exhibit A to the proposed rule change, which replaces all previous versions of Exhibit A.

CBOE Rule 5.5: Series of Option Contracts Open for Trading

*** * * Interpretations and Policies**

.01: The interval between strike prices of series of options on individual stocks [will] *may* be: *a. $1.00 or greater (''$1 Strike prices'') provided the strike price is $20.00 or less, but not less than $3. The listing of $1 strike prices shall be limited to options classes overlying no more than 5 individual stocks (''The $1 Strike Pilot Program'') as specifically designated by the Exchange. The Exchange may list $1 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $1 Strike Pilot Program under their respective rules.*

To be eligible for inclusion into the $1 Strike Pilot Program, an underlying stock must close below $20 in its primary market on the previous trading day. After a stock is added to the $1 Strike Pilot Program, the Exchange may list $1 strike prices from $3 to $20 that are no more than $5 from the closing price of the underlying on the preceding day. For example, if the underlying stock closes at $13, the Exchange may list strike prices from $8 to $18. The Exchange may not list series with $1.00 intervals within $0.50 of an existing $2.50 strike price (e.g., $12.50, $17.50) in the same series. Additionally, the Exchange may not list long-term option series (''LEAPS®'') at $1 strike price intervals for any option class selected for the $1 Strike Pilot Program.

A stock shall remain in the $1 Strike Pilot Program until otherwise designated by the Exchange. The $1 Strike Pilot Program shall expire on (insert date one-year from approval).

[a.]*b.* $2.50 or greater where the strike price is $25.00 or less, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under rule 5.3 and where the strike price is $200.00 or less; *provided, however, that the Exchange may not list $2.50 intervals below $20 (e.g., $12.50, $17.50) for any class included within the $1 Strike Pilot Program if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart.*

[b.]*c.* $5.00 or greater where the strike price is greater than $25.00, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under Rule 5.3 and where the strike price is more than $200.[,]00;

[c.]*d.* $10.00 or greater where the strike price is greater than $200.00.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE rule 5.5 establishes the guidelines regarding the addition of series for trading on the Exchange. Under CBOE rule 5.5, the Exchange currently has the ability to list $2.50 intervals for strike prices under $25, $5.00 intervals for strikes between $25 and $200, and $10 intervals for strikes above $200.[11] The CBOE notes that stock prices in general have dropped over the past couple of years, with many individual listings registering precipitous declines. As a result, the CBOE currently lists options on more than 800 stocks trading under $20, including Cisco, Oracle, SunMicrosystems, Lucent, Nortel, JDS Uniphase, Amazon, Nextel, AT&T, Motorola, and Compaq. According to the CBOE, these stocks are among the most widely held and actively traded equities listed on the New York Stock Exchange, Inc. (''NYSE'') or Nasdaq and the options overlying these stocks also trade actively.

The CBOE notes that when a stock underlying an option trades at a lower price, it takes a larger percentage gain in the stock for an option to become in-the-money. For example, when a stock trades at $8 an investor who wants to buy a slightly out-of-the-money call option would have to buy the $10 call. At these levels, the stock price would need to register a 25% change before it reached $10 (*i.e.*, in-the-money status). According to the CBOE, a 25% gain in the underlying is especially large given the lessened degree of volatility that has accompanied many stocks and options over the past several months. Due to the recent preponderance of low priced stocks, member firms have expressed an interest in listing additional strike prices on these classes so that they can provide their customers with greater flexibility in their investment choices. For this reason, the Exchange proposes to implement a one-year Pilot Program, as described below.

Pilot Program Eligibility: The Exchange proposes to amend Interpretation and Policy .01 to CBOE rule 5.5 to allow the CBOE to list series with $1 strike price intervals on equity option classes that overlie up to five individual stocks, provided that the strike prices are $20 or less, but not less than $3. The appropriate Exchange committee would make the determination of which underlying stocks are to be included in the Pilot Program. A class becomes eligible for inclusion in the Pilot Program when the underlying stock price closes below $20 in its primary market on the previous business day. Underlying stocks trading under $20 that are not a part of the Pilot Program would continue to be eligible for trading in $2.50 and $5.00 intervals.

Although CBOE may select only up to five individual stocks to be included in the Pilot Program, the Exchange would not be precluded from also listing options on other individual stocks at $1 strike price intervals if other options exchanges listed those series pursuant to their respective $1 strikes pilot programs.

Procedures for Adding $1 Strike Price Intervals: The procedures for adding $2.50 or $5.00 strikes currently are provided in Exchange rule 5.5.[12] The Exchange proposes to amend CBOE rule 5.5 to delineate these standards to accommodate the addition of $1 strike price intervals. Under this proposal, the closing price of the underlying stock serves as the reference point for determining which $1 strike prices the Exchange may open for trading.

To minimize the unnecessary proliferation of series, the Exchange will only list $1 strike prices that fall within a $5 range of the underlying stock price, and no strike prices will be added outside of the $5 range. For example, if

[11] Interpretation and Policy .01 to CBOE rule 5.5. Additionally, Interpretation and Policy .05 to CBOE rule 5.5 establishes guidelines for listing $2.50 strikes for a set number of classes with series trading between $25 and $50.

[12] CBOE rule 5.5(c) provides for the addition of series ''when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying stock moves substantially from the initial exercise price or prices.'' If the Exchange initiates options trading on a new class whose underlying stock is below $20, rule 5.5(b) governs the establishment of strike prices.

the underlying stock trades at $6, the Exchange could list $1 strikes from $3 to $11.[13] The CBOE believes that this proposed range-format will significantly restrict the number of series that may be added at any one time.

Under existing Interpretation and Policy .01(a) to CBOE rule 5.5, the Exchange may list strike prices with $2.50 intervals when an underlying stock trades below $25. Accordingly, several option classes have $7.50, $12.50, and $17.50 strike prices (the ''$2.50 series'' or ''$2.50 intervals''). To further avoid the proliferation of series, the Exchange does not intend to list $1 strike prices at levels that ''bracket'' existing $2.50 intervals (*e.g.*, $7 and $8 strikes around a $7.50 strike). Accordingly, the Exchange does not intend to list $7, $8, $12, $13, $17, and $18 levels in an expiration month where there is a corresponding $2.50 level. As the $2.50 intervals are ''phased-out,'' as described below, the Exchange would introduce the $1 levels that bracket the phased-out price. For example, when the $7.50 series expires, the Exchange would replace it by issuing a new month with $7 and $8 intervals.

Procedures for Phasing-out $2.50 Strike Price Intervals: When a stock becomes part of the $1 Strike Pilot Program, the Exchange will begin the corresponding process of phasing-out the existing $2.50 intervals on the same stock in favor of $1 intervals. To phase-out the $2.50 intervals, the Exchange would first delist those $2.50 series for which there is no open interest. Second, the Exchange would no longer add new expiration months at $2.50 intervals below $20 when the existing months expire. This would cause the $2.50 strike price intervals below $20 to be phased-out when the farthest-out month with a $2.50 interval eventually expires.

$1 Strikes for LEAPS: CBOE will not list LEAPS in equity option classes at $1 strike price intervals.

Procedures for Adding Expiration Months: Interpretation and Policy .03 to CBOE rule 5.5 will govern the addition of expiration months for $1 strike series. Pursuant to this rule, the Exchange generally opens up to four expiration months for each class upon initial listing of an options class for trading. Upon expiration of the near-term month, the Exchange may list an additional expiration month provided, however, that the underlying stock price closes below $20 on its primary market on expiration Friday. If the underlying closes at or above $20 on expiration Friday, the Exchange would not list an additional month for a $1 strike series until the stock again closes below $20.

Procedures for Deleting $1 Strike Price Intervals: At any time, the Exchange may cease listing $1 strike prices on existing series by submitting a cessation notice to the Options Clearing Corporation (''OCC'').[14] As discussed above, if the underlying closes at or above $20 on expiration Friday, the Exchange would not list any additional months with $1 strike prices until the stock subsequently closed below $20. If the underlying does not subsequently close below $20, thereby precluding the listing of additional strike prices and months, the existing $1 series will eventually expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the 5 stock Pilot Program, thereby allowing the Exchange to list classes on an additional stock. Once the Exchange submits the cessation notice, it would not list any additional months for trading with strikes below $20 (unless the underlying once again closed below $20).[15]

OPRA Capacity: CBOE represents that OPRA has the capacity to accommodate the increase in the number of series added pursuant to the Pilot Program. The Exchange notes that in December 2000 it listed approximately 109,000 series. By September 2001, this number declined almost 10% to approximately 100,000. The increase in the number of series quoted would be substantially below the 9,000 series decrease the CBOE experienced.

2. Statutory Basis

The Exchange believes that the addition of $1 strike prices would stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that $1 strike prices would provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[17] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[13] As indicated above, strike prices for options included in the Pilot Program may not be greater than $20 or less than $3.

[14] Among the reasons for submitting a cessation notice are the expiration of available $1 strikes (*i.e.*, underlying stock price remains at or above $20), series proliferation concerns, and delisting because of low price, merger, takeover, or other events. In any event, with prior notice to the membership and customers, CBOE would continue to have the ability to cease trading series that become inactive and have no open interest.

[15] If the underlying stock trades below $20 after submission of the cessation notice by the Exchange, CBOE could list $1 strike prices again provided it included the class as one of the five classes permitted under the Pilot Program.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78(f)(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–60 and should be submitted by May 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10957 Filed 5–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47735; File No. SR–NASD–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Clarifying the Operation of the Daily Opening Process in Nasdaq's SuperMontage System

April 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 13, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On April 24, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to clarify the current operation of the daily opening process in Nasdaq's Order Display and Collector Facility (''NNMS'' or ''SuperMontage'') when the market is locked and/or crossed immediately prior to 9:30 a.m. Eastern Time.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)—(iii) of this rule), and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in paragraphs (i), (ii) and (iii) below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Effective February 10, 2003, until March 17, 2003, this processing shall also apply to Non-Directed Orders of NNMS Order Entry Firms. Thereafter, this exception shall not apply to Non-Directed Orders Entered by NNMS Order Entry Firms. Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of *Nasdaq* Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

The I value described above shall be available for the use of NNMS Order Entry Firms on March 17, 2003, and available for use by Nasdaq Quoting Market Participants on May 12, 2003.

(b) through (c) No Change.

(C) through (D) No Change.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original Rule 19b-4 filing in its entirety. For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to commence on April 24, 2003, the date that Nasdaq filed Amendment No. 1.

(2) No Change.

(3) Entry of Locking/Crossing Quotes/Orders The system shall process locking/crossing Quotes/Orders as follows:

(A) No Change.

(B) Locked/Crossed Quotes/Orders Immediately Before the Open—If the market is locked or crossed at 9:29:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:30 a.m. and 9:29:59 Eastern Time, once NNMS has cleared a locked or crossed market, or if a newly submitted quote/order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by processing such locking or crossing quote/order in a manner consistent with subparagraph (b)(3)(a) of this Rule.

(i) *Exception—The following exception shall apply to the above locked/crossed processing parameters:*

If a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other Quoting Market Participant or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710 (b) (1)(B)(iv)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710 (b) (1)(B)(iv)(a).

(4) through (8) No Change.

(c) through (e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 23, 2002, the Commission approved SR–NASD–2002–56 establishing a uniform process for opening daily trading in Nasdaq's SuperMontage system.[4] Part of that filing included a description of how SuperMontage would automatically clear locked or crossed markets immediately prior to the 9:30 a.m. Eastern Time Nasdaq market open. As described, SuperMontage would, commencing at 9:29:30 Eastern Time, match off the most aggressively priced locking and crossing quotes/orders against each other with any price improvement going to the oldest of the pair.

That filing, however, failed to make specific note of SuperMontage's present default programming that, prior to other processing, first attempts to match off any quote/order entered by a Nasdaq Quoting Market Participant against any quotes/order(s) entered by that same Nasdaq Quoting Market Participant on the other side of the market (if those quote/order(s) on the other side of the market are at the best bid or offer). Nasdaq represents that this general default preference in SuperMontage execution and delivery processing is followed both during normal trading[5] as well as the pre-open unlocking/uncrossing spin. Nasdaq further represents that this filing proposes the addition of language to make that fact clear.

In addition, Nasdaq represents that this filing clarifies that, just like during the normal trading day, the Quotes/Orders of NNMS Order Entry Firms that become subject to the pre-opening unlocking/uncrossing processing will not automatically internalize first against best-priced trading interest entered by that same NNMS Order Entry on the other side of the market. Instead, such interaction will only take place if such Quotes/Orders would match off against each naturally during the unlocking/uncrossing process. NNMS Order Entry Firms may prevent any interaction between its own buy and sell quotes through the use of the ''Y'' anti-internalization qualifier as permitted by NASD Rule 4710(b)(1)(B)(iv)(a). Finally, the filing clarifies that the Quoting Market Participants referred to in that part of the rule related to the Y AIQ value are Nasdaq Quoting Market Participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[6] in general and with section 15A(b)(6) of the Act,[7] in particular, in that in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Nasdaq represents that the processing described in this filing has been previously approved by the Commission, as noted above, and recognizes the liquidity benefits that accrue to all market participants by providing incentives for quoting market participants to enter an expanded universe of quotes/orders on both sides of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective on April 24, 2003, the date of filing of Amendment No. 1 to the proposed rule change, pursuant to section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9]

[4] *See* Exchange Act Release No. 46410 (August 23, 2002); 67 FR 55897 (August 30, 2002).

[5] *See* NASD Rule 4710(b)(1)(B)(iv)(a).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative waiting period because the processing described by this proposal is already operative in SuperMontage during the trading day and Nasdaq believes that designating the proposal as immediately effective and operative will ensure that formal notice of this processing during the SuperMontage opening is provided to market participants as soon as practicable.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on April 24, 2003, the date of filing of Amendment No. 1 to the proposed rule change, in order to allow Nasdaq to provide notice to its members of this aspect of the Nasdaq opening process immediately.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

[10] As required under Rule 19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[13] For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to commence on April 24, 2003, the date that Nasdaq filed Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–NASD–2003–38 and should be submitted by May 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11014 Filed 5–2–03; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47750; File No. SR–Phlx–2003–16]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Charges to Members for Orders Entered Through the Intermarket Options Linkage

April 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 18, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change,[3] as described in Items I, II, and III below, which Items have been prepared by the Phlx. On March 21, 2003, Phlx filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1, was originally published for comment in the **Federal Register** on April 2, 2003.[5] On April 23, 2003, Phlx filed Amendment No. 2 to the proposed rule change.[6] On April 23, 2003, Phlx filed a supplementary letter to Amendment No. 2.[7] The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the Original Filing, Phlx proposed to amend its fee schedule to set forth charges applicable to Principal Orders sent to the Exchange via the Intermarket Options Linkage (''Linkage''). In the proposed fee schedule attached to the Original Filing, floor brokerage assessments (which do not apply to Linkage orders) were not accurately described.[8] In addition, in a separate filing, Phlx amended its fee schedule on April 11, 2003 to modify the fees applicable to broker/dealers for non-AUTO-X trades.[9] Previously, the fee was $.35 per contract. Now, the fee ranges from $.35 per contract to $.20 per contract, depending on the number of contracts.[10] In the Original Filing, Phlx

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 17, 2003 (''Original Filing'').

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 (''Amendment No. 1'').

[5] *See* Securities Exchange Act Release No. 47561 (March 21, 2003), 68 FR 15250.

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003 (''Amendment No. 2'').

[7] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003.

[8] In the Original Filing, the Option Floor Brokerage Assessment was set forth as 5% of net floor brokerage income. The current Option Floor Brokerage Assessment is 5% of net floor brokerage income for brokers with monthly net brokerage income of $0 to $300,000; 6.5% of net floor brokerage income for brokers with monthly net brokerage income of $301,000 to $500,000; and 7.5% of net floor brokerage income for brokers with monthly net brokerage income of $500,001 and over.

[9] *See* Securities Exchange Act Release No. 47715 (April 23, 2003), 68 FR 22446 (April 28, 2003).

[10] The fee is $.35 per contract for up to 2,000 contracts, $.25 per contract for between 2,001 and 3,000 contracts; and $.20 per contract above 3,001

Continued

stated that its proposed linkage fees were consistent with other fees charged by the Exchange for non-Linkage Orders. In Amendment No. 2, Phlx clarifies that due to the recent changes to the options transaction charges applicable to broker-dealers discussed above, the proposed fee applicable to Principal Orders sent to the Exchange via the Linkage is no longer consistent with other fees charged by the Exchange for non-Linkage Orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change.[11] The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[12]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the fee schedule to reflect changes made to Phlx's fee schedule subsequent to the Original Filing and to make a correction to the fee schedule.

2. Statutory Basis

Phlx believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(4),[14] in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members who avail themselves of the linkage.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) by order approve the proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File Number SR–Phlx–2003–16 and should be submitted by May 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10958 Filed 5–2–03; 8:45 am]

BILLING CODE 8010–01–P

contracts (with the first 3,000 contracts charged $.25 per contract).

[11] *See* Original Filing, note 5 *supra.*

[12] *Id.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 17 CFR 200.30–2(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3494]

State of Alaska

As a result of the President's major disaster declaration on April 26, 2003, I find that the Kenai Peninsula Borough, Matanuska-Susitna Borough and Municipality of Anchorage in the State of Alaska constitute a disaster area due to damages caused by a severe winter storm, including high winds and freezing temperatures that occurred on March 6 through March 14, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 25, 2003 and for economic injury until the close of business on January 26, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following contiguous boroughs and areas may be filed until the specified date at the above location: Denali Borough, Kodiak Island Borough, Lake and Peninsula Borough, Chugach Regional Educational Attendance Area (REAA), Copper River REAA, Delta/Greely REAA and Iditarod Area REAA in the State of Alaska.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.378
Businesses and non-profit organizations without credit available elsewhere	3.189
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.189

The number assigned to this disaster for physical damage is 349411 and for economic injury the number is 9V0800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–10939 Filed 5–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3493]

State of Florida

As a result of the President's major disaster declaration on April 25, 2003, I find that Miami-Dade County in the State of Florida constitutes a disaster area due to damages caused by severe storms and tornadoes occurring on March 27, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 24, 2003 and for economic injury until the close of business on January 26, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Broward, Collier and Monroe in the State of Florida.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.378
Businesses and non-profit organizations without credit available elsewhere:	3.189
Others (including non-profit organizations) with credit available elsewhere:	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere:	3.189

The number assigned to this disaster for physical damage is 349312 and for economic injury the number is 9V0700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–10940 Filed 5–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3492]

State of Mississippi

As a result of the President's major disaster declaration on April 24, 2003, I find that Amite, Attala, Claiborne, Clarke, Copiah, Franklin, Hinds, Holmes, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Lawrence, Leake, Lincoln, Madison, Neshoba, Newton, Pike, Rankin, Scott, Simpson, Smith, Walthall, Warren, Wayne and Yazoo in the State of Mississippi constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on April 6 through April 14, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 23, 2003 and for economic injury until the close of business on January 26, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Carroll, Choctaw, Covington, Greene, Humphreys, Jefferson Davis, Jones, Leflore, Marion, Montgomery, Noxubee, Perry, Sharkey, Washington, Wilkinson and Winston Counties in the State of Mississippi; Choctaw, Sumter and Washington Counties in the State of Alabama; Chicot County in the State of Arkansas; and East Carroll, East Feliciana, Madison, St. Helena, Tangipahoa, Tensas and Washington Parishes in the State of Louisiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.378
Businesses and non-profit organizations without credit available elsewhere	3.189
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.189

The number assigned to this disaster for physical damage is 349211. For economic injury the number is 9V0300 for Mississippi; 9V0400 for Alabama; 9V0500 for Arkansas; and 9V0600 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 24, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–10938 Filed 5–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9V09]

State of Pennsylvania

Forest County and the contiguous counties of Clarion, Elk, Jefferson, McKean, Venango and Warren in the State of Pennsylvania constitute an economic injury disaster loan area as a result of a fire that occurred on March 23, 2003 in the Borough of Tionesta. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on *January 29, 2004* at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.189 percent. The number assigned for economic injury for this disaster is 9V0900

(Catalog of Federal Domestic Assistance Program No. 59002).

Dated: April 29, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–10991 Filed 5–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3485]

Commonwealth of Virginia

Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 28, 2003, the above numbered declaration is hereby amended to include Lee, Pulaski and Roanoke Counties in the Commonwealth of Virginia as disaster areas due to damages caused by a severe winter storm, record snowfall, heavy

rain, flooding and mudslides occurring on February 15 through February 28, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bedford, Botetourt, Carroll, Franklin, Scott and Wythe in the Commonwealth of Virginia; and Claiborne and Hancock Counties in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Tennessee is 9V1000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 27, 2003, and for economic injury the deadline is December 29, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 29, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–10990 Filed 5–2–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

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 Building, 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.

Supplement to Claim of Person Outside the United States; 20 CFR 404.460, 20 CFR 422.505(b), 20 CFR 404.460 and 404.463 of Subpart E, and 42 CFR 407.27(c)–0960–0051. The information collected on Form SSA–21 is used by the Social Security Administration (SSA) to determine continuing entitlement to Social Security benefits and the proper benefit amounts of alien beneficiaries living outside the United States (U.S.). It is also used to determine whether benefits are subject to withholding tax. The respondents are comprised of individuals entitled to Social Security benefits, who are, will be, or have been residing outside the U.S.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,917.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections 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.

1. *Prohibition of Payments of SSI Benefits to Fugitive Felons and Parole/Probation Violators; CFR 416.708–0960–0617.* Section 1611(e) of the Act provides that a person shall not be considered an eligible individual or eligible spouse for purposes of the SSI program for any month during which the person is fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of the State); is fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of the State); or is violating a condition of probation or parole imposed under Federal or State law. 20 CFR 416.708 describes events which must be reported by an individual receiving SSI benefits, a representative payee for an SSI recipient, or an applicant awaiting a final decision on an application for SSI benefits. It is therefore necessary for SSA to require a report for SSI applicants and recipients if they are in violation of any of the stated conditions. The information reported will be used by SSA to determine eligibility for SSI benefits or whether to suspend SSI benefit payments. The respondents are SSI applicants or recipients, or the representative payee of same, who are in violation of the above stipulations.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 16.6.

2. *Request to be Selected as Payee—20 CFR 404.2010–404.2025; 20 CFR 416.601–416.665–0960–0014.* The information collected by SSA on form SSA–11–BK is used to determine the proper payee for a Social Security beneficiary, and it is designed to aid in the investigation of a payee applicant. The form will establish the applicant's relationship to the beneficiary, the justification of the need for a payee, the concern for the beneficiary and the manner in which the benefits will be used. The respondents are applicants for selection as representative payee for Old Age, Survivors and Disability Insurance, Supplemental Security Income (SSI), and title VIII Special Veterans Benefits.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 2,121,686.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 371,295 hours.

3. *Request for Internet Service—Authentication—20 CFR 401.45–0960–0596.* The information collected on the electronic request for Internet Service—

Authentication, is used by the Social Security Administration to identify its customers who are requesting Privacy Act protected information. The respondents are members of the public who request services from SSA through the Internet.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 21,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 525 hours.

4. *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 an 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.

5. *Statement of Employer—20 CFR 404.801–404.803–0960–0030.* The information collected by SSA on form SSA–7011 is needed to substantiate allegations of wages paid to workers when those wages do not appear in SSA's records of earnings and the worker does not have proof that payment was made. This information is used to process claims for social security benefits and to resolve discrepancies in earnings records. The respondents are certain employers who can verify allegations of wages made by the wage earner.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 925,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 308,333 hours.

Dated: April 29, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–10954 Filed 5–2–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4346]

30-Day Notice of Proposed Information Collections

Form DS–2003, Notification of Appointment of Foreign Diplomatic and Career Consular Officer (OMB Collection Number 1405–0062); Form DS–2004, Notification of Appointment of Foreign Government Employee (OMB Collection Number 1405–0060); Form DS–2005, Notification of Appointment of Honorary Consular Officer (OMB Collection Number 1405–0064); Form DS–2006, Notification of Change, Identification Card Request (OMB Collection Number 1405–0089); Form DS–2007, Notification of Dependents of Diplomatic, Consular, and Foreign Government Employees (OMB Collection Number 1405–0090); and Form DS–2008, Notification of Termination of Diplomatic, Consular, or Foreign Government Employment (OMB Collection Number 1405–0061).

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a Currently Approved Collection.

Originating Office: DS/OFM.

Title of Information Collection: Notification of Appointment of Foreign Diplomatic and Career Consular Officer.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2003.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 2,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 833.

Title of Information Collection: Notification of Appointment of Foreign Government Employee.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2004.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 2,083.

Title of Information Collection: Notification of Appointment of Honorary Consular Officer.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2005.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 200.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 83.

Title of Information Collection: Notification of Change, Identification Card Request.

Frequency: As often as necessary to add a new person to a foreign mission roster.

Form Number: DS–2006.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 9 minutes.

Total Estimated Burden: 750.

Title of Information Collection: Notification of Dependents of Diplomatic, Consular, and Foreign Government Employees.

Frequency: As often as necessary to add a new person to a principle record.

Form Number: DS–2007.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 7,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 1,167.

Title of Information Collection: Notification of Termination of Diplomatic, Consular, or Foreign Government Employment.

Frequency: As often as necessary to terminate foreign mission members.

Form Number: DS–2008.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 7,200.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 1200.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Jacqueline Robinson, U.S. Department of State, Office of Foreign Missions, Washington, DC 20520–3302, who may be reached at 202–895–3528. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: April 24, 2003.

Jacqueline D. Robinson,

Director, Accreditations & Diplomatic Motor Vehicles, Office of Foreign Missions, Department of State.

[FR Doc. 03–11007 Filed 5–2–03; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4309]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, May 16, 2003, from 10 a.m. to approximately 4 p.m., as necessary, in Room 1105 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss various issues related to international legal considerations relating to post-conflict Iraq; litigation relating to the Vienna Convention on Consular Relations, compensation for victims of terrorism, an update on developments relating to the Alien Tort Statute, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, May 14, 2003, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: April 25, 2003.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Secretary, Advisory Committee on International Law, Department of State.

[FR Doc. 03–11006 Filed 5–2–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4308]

Industry Advisory Panel Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Tuesday, May 20, 2003, from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. eastern standard time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at 703/875–7109 before Wednesday, May 14th, to provide date of birth, Social Security number, and telephone number.

For Further Information Contact: Luigina Pinzino 703/875–7109.

Dated: April 22, 2003.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 03–11005 Filed 5–2–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Mid-Atlantic Freight, Inc., d/b/a OBXpress Air Shuttle

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2003–4–19), Docket OST–02–14145.

SUMMARY: The Department of Transportation is proposing to find that Mid-Atlantic Freight, Inc. d/b/a OBXpress Air Shuttle is fit, willing, and able, to provide commuter air service under 49 U.S.C. 41738.

Responses: Objections and answers to objections should be filed in Docket OST–02–14145 and addressed to the Department of Transportation Dockets, PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: April 25, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–10942 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[FMCSA Docket FMCSA–2002–13295]

Oregon Department of Transportation Application for Exemptions for Farmers

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of Secretarial Decision.

SUMMARY: The Secretary of Transportation (Secretary) is denying the Oregon Department of Transportation's (ODOT) application for exemptions from all the requirements of 49 CFR part 393, concerning parts and accessories necessary for the safe operation of commercial motor vehicles (CMVs), and 49 CFR part 396, concerning the inspection, repair and maintenance of CMVs, on behalf of motor carriers certified by and registered with ODOT as farmers. ODOT

and the vast majority of persons responding to the December 26, 2002, notice published by the Federal Motor Carrier Safety Administration (FMCSA) believe the exemptions would have little if any impact on highway safety. The Department of Transportation (DOT) finds that granting the exemptions would not achieve a level of safety equivalent to, or greater than, the level of safety that would be achieved by complying with the Federal regulations. Neither ODOT nor the persons submitting comments in support of the exemptions application presented specific alternatives to the Federal requirements concerning safety equipment on CMVs, and the inspection, repair and maintenance of such vehicles, which the agency could consider likely to achieve the requisite level of safety.

DATES: The decision is effective on May 5, 2003.

ADDRESSES: You can review the docket comments discussed in this document by visiting the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also see the comments at *http://dmses.dot.gov.* Please use the docket number that appears in the heading of this document to locate the comments. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Sections 31315 and 31136 of title 49 of the United States Code (U.S.C.) provide the authority to grant exemptions from certain portions of the Federal Motor Carrier Safety Regulations (FMCSRs). An exemption provides time-limited regulatory relief from one or more FMCSRs given to a person or class of persons subject to the regulations, or who intend to engage in an activity that would make them subject to the regulations. An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed. These sections also require the agency to consider whether the terms and conditions for the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulations when evaluating applications for exemptions.

An interim final rule implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (codified at 49 U.S.C. 31315) was published on December 8, 1998 (63 FR 67600). These regulations at 49 CFR part 381 establish the procedures to be followed by persons requesting waivers, or applying for exemptions from the FMCSRs, and the procedures used to process them.

A notice must be published in the **Federal Register** for each exemption requested, explaining the request that has been filed; providing the public with an opportunity to inspect the safety analysis and any other relevant information; and requesting public comment on the exemption (49 U.S.C. 31315(b)(4)(A)) and 49 CFR 381.315).

In granting a request for an exemption, a notice must be published in the **Federal Register** identifying: (1) The person or class of persons who will receive the exemption; (2) what regulation is covered by the exemption; (3) how long the exemption is in effect; and (4) all terms and conditions of the exemption. The terms and conditions established by the agency must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

ODOT Application for Exemptions

ODOT applied for exemptions from all the requirements of 49 CFR parts 393 and 396 on behalf of all motor carriers certified and registered with ODOT as farmers. A copy of the application is included in the docket referenced at the beginning of this notice. The exemptions would be applicable only when these carriers are engaged in transportation related to farm operations and the commercial motor vehicle (CMV) is registered with ODOT as a farm vehicle. The exemptions would not be applicable when these carriers operate as for-hire carriers.

ODOT indicated that it was requesting the exemptions primarily because the State could lose Motor Carrier Safety Assistance Program (MCSAP) funding from FMCSA for having laws and regulations, applicable to interstate operations, that are less stringent than the Federal requirements. ODOT believed that, based on discussions with legislators and public meetings with farm groups, it was unlikely that the Oregon legislature would revise the law.

ODOT believed the level of safety for farmers operating under the exemptions would be equivalent to the level of safety that would be provided by the Federal safety regulations because the State would continue to enforce its rules of the road and equipment regulations applicable to all motorists and motor vehicles. Farm vehicles in Oregon are currently required to comply with State requirements related to parts and accessories, including brakes, lights, mudguards and fenders, emissions and exhaust, windows, horns, mirrors, etc. Furthermore, ODOT has the authority to inspect any vehicle to verify compliance.

Request for Comments

On December 26, 2002 (67 FR 78855), the agency requested public comment from all interested parties on ODOT's application for exemptions in accordance with 49 U.S.C. 31315(b)(4) and 31136(e). Interested persons were requested to consider each exemption separately, to the greatest extent practicable. The notice indicated that a decision could grant or deny either or both portions of the application based on the comments received, and any other relevant information.

Discussion of Comments

One hundred and fourteen comments were received in response to the December 26 notice. The comments included those from: Advocates for Highway and Auto Safety (Advocates); Commercial Vehicle Safety Alliance (CVSA); farmers and other agricultural-related businesses, associations, or groups in Oregon (101 comments); the Oregon Trucking Associations, Inc.; and four State motor carrier enforcement agencies (Georgia Department of Motor Vehicle Safety; Idaho State Police; Indiana State Police; ODOT, Motor Carrier Transportation Division). Comments were also received from Michael Millard, an individual who did not identify his occupational interest. In addition, comments were received from two members of the U.S. House of Representatives (Darlene Hooley and Greg Walden) and three members of the Oregon State House of Representatives (Alan Brown, Chairman of the House Transportation Committee; Jeff Kropf, Chairman of the House Agriculture and Natural Resources Committee; and Karen Minnis, Speaker of the House).

The overwhelming majority (109 out of 114) of the commenters were in favor of granting the exemption application. The Idaho State Police and Indiana State Police believe an exemption should be

granted but only for the purpose of providing ODOT with sufficient time to adopt compatible safety regulations for the interstate operation of farm vehicles. Advocates, the Georgia Department of Motor Vehicle Safety, and Michael Millard believe the ODOT's exemptions application should be denied.

Commenters in Favor of Granting the Exemptions

Generally, most of the commenters in favor of granting the exemptions believe that Oregon Revised Statutes (ORS) provide sufficient safety requirements for farm vehicles. They believe that the State's requirements concerning vehicle safety equipment and motor carrier operations would ensure safety. Most of the commenters also considered the Federal requirements to be redundant of the State regulations.

The commenters believe that denying the ODOT exemptions application would result in ODOT being required to adopt regulations that are compatible with agency rules applicable to interstate motor carriers, and to increase the State's enforcement activities concerning farm vehicle operations, such as conducting more roadside inspections of these vehicles. Commenters indicated that accident involvement of farm vehicles is low compared to other types of commercial vehicle operations in the State and that limited enforcement resources should not be focused on farm vehicles. They indicated that most of the farm trucks are small trucks operated short distances at low speeds, and that the safety record for the operation of such vehicles suggests that it is unnecessary to apply the Federal safety rules to them.

Commenters in favor of granting the exemptions also emphasized that a significant portion of Oregon's truck safety program is funded through the Federal Motor Carrier Safety Administration's Motor Carrier Safety Assistance Program (MCSAP). They argued that ODOT's program would be greatly reduced if the State lost MCSAP funding.

Commenters Opposed to Granting the Exemptions

Advocates argued that (1) exemption authority cannot be used to evade compliance with Federal regulations; (2) procedurally, ODOT cannot apply for exemptions on behalf of entities who are not a part of ODOT, (3) there is insufficient information to support granting the exemptions, and (4) granting the exemptions would not make Oregon eligible for MCSAP grants. Advocates consider the exemptions to be an effort to avoid the consequences of Oregon's failure to comply with the MCSAP requirements, and believe that the statute authorizing the exemptions does not indicate that a State governmental entity may apply for exemptions.

The Indiana State Police (Indiana) believe that granting the exemptions would be inconsistent with MCSAP goals of achieving uniformity and compatibility of State regulations with Federal rules. However, Indiana believes ODOT should be provided a temporary exemption to enable the Oregon legislature to amend the ORS. The Idaho State Police (Idaho) echoed those views. Idaho does not believe the public interest would be served by withholding MCSAP funds from Oregon.

DOT Response to Comments

The DOT does not believe there is sufficient information to support a determination that the exemptions are likely to achieve a level of safety equivalent to, or greater than, the level of safety obtained by complying with the applicable Federal safety rules.

Although ODOT and most of the commenters argued that the State rules provide sufficient safety requirements, there are too few details in the ORS and Oregon Administrative Rules (OARs) to ensure that all parts and accessories on CMVs operated by motor carriers certified by, and registered with, ODOT as farmers are maintained at the same level required of CMVs subject to 49 CFR parts 393 and 396. This is especially true given that OAR section 740–100–0010 adopts by reference the Federal Motor Carrier Safety Regulations, including parts 393 and 396. There is no clear indication what safety rules would remain in force if all of the requirements as presented in 49 CFR parts 393 and 396, and adopted by reference in OAR section 740–100–0010, are deemed unnecessary. Therefore, there is no readily apparent means to compare the safety requirements that ODOT would enforce under the terms and conditions of the exemptions, with the specific rules under 49 CFR parts 393 and 396. These requirements include whether motor carriers certified by and registered with ODOT as farmers, would be required to ensure that their vehicles have retroreflective sheeting and reflex reflectors to reduce the incidence of passenger vehicles crashing into CMVs at nighttime; automatic brake adjusters, and brake adjustment indicators (for air braked vehicles manufactured on or after October 20, 1994); antilock braking systems; rear impact guards and rear impact protection; safe fuel systems and fuel tanks; and, adequate means of protection against shifting and falling cargo. While it may be possible to establish and enforce safety rules concerning these issues with less specificity than the current Federal regulations, doing so would certainly involve a lower standard of safety by failing to describe in meaningful detail minimum standards that would ensure an appropriate level of motor carrier safety.

Although the ODOT application cited ORS chapter 811, 815, and 816 as providing rules to ensure safety, the references are nothing more than statutory authority for the ODOT to develop detailed regulations. The statutes, in and of themselves, do not establish requirements applicable to motor carriers. A discussion of statutory authority, without describing in detail how that authority was exercised in the regulations promulgated, is not sufficient basis for concluding that the exemptions would not have an adverse impact on safety.

As for commenters who believe that the adoption of compatible regulations would necessitate increased inspections of farm-plated vehicles, there is no requirement for States participating in MCSAP to shift their enforcement focus from motor carriers with well-documented safety problems, to populations of motor carriers with better safety performance records, simply because the rules are applicable to the latter group. The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving CMVs. The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carriers practices will be detected and corrected before they become contributing factors to accidents. The MCSAP also establishes, under 49 CFR part 350, the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSRs and Federal Hazardous Materials Regulations (HMRs) for both interstate and intrastate motor carriers and drivers. While part 350 has the effect of requiring that States be aware of motor carrier safety problems within their jurisdiction and develop appropriate strategies for

improving safety, States have the flexibility and discretion to determine the level of enforcement warranted for a given segment of the motor carrier population operating in the State. The State would identify its planned activities in its annual Commercial Vehicle Safety Plan (CVSP) that must be submitted to the FMCSA. Therefore, ODOT would submit its CVSP identifying CMV enforcement activities, based on ODOT's analysis of safety data. The FMCSA would then review the plan to ensure compliance with the requirements of 49 CFR part 350.

The DOT is committed to working with ODOT to ensure compliance with the MCSAP requirements. This action does not take exception to ODOT's CVSP, but to the State's failure to rescind an incompatible statute applicable to CMVs operating in interstate commerce. Therefore, adopting compatible laws and regulations should not be considered a Federal mandate to include an expanded enforcement program for motor carriers certified by and registered with ODOT as farmers. Requiring compatible laws and regulations does not negate the State's flexibility in managing its enforcement program. The DOT will continue to work with ODOT officials to achieve full compliance with 49 CFR part 350.

With regard to the comments from Advocates, the Department agrees that exemptions must not be used to evade compliance with part 350. However, the Department does not consider ODOT's request to represent such an effort. ODOT presented an application in which the State proposed that its requirements, while significantly less specific than the applicable Federal rules, would achieve the requisite level of safety. After reviewing the public comments and the application for exemptions, the DOT concluded—as did Advocates—that there is insufficient information to support such a determination, and that the Department must therefore deny the application. The fact that the application had shortcomings should not be construed as an attempt by ODOT to evade compliance with the MCSAP requirements.

In response to Advocates comment about procedural requirements concerning exemptions applications, and the impact the exemptions would have on ODOT's MCSAP eligibility, the DOT disagrees. Neither the statutes authorizing the granting of exemptions (49 U.S.C. 31315 and 31136(e)), nor the implementing regulations under 49 CFR part 381 explicitly prohibit a State or other entity from submitting applications for exemptions on behalf of motor carriers subject to the FMCSRs. Although it is unusual for a non-motor carrier entity to submit such a request, it is not prohibited and it is not unique. Exemptions have been granted in the past concerning fuel tank fill rates and certification markings on fuel tanks in response to applications from Ford Motor Company and General Motors Corporation submitted on behalf of motor carriers operating vehicles manufactured by those companies.[1]

In regard to MCSAP eligibility, the granting of the exemptions would only temporarily, and indirectly, resolve ODOT's incompatible regulation. Exemptions granted pursuant to 49 U.S.C. 31315 or 31136(e) preempt incompatible State rules. During the time period that exemptions are in effect, States are prohibited from enforcing any law or regulation that conflicts with or is inconsistent with the exemptions with respect to a person operating under the exemptions. This means that if the exemptions from 49 CFR parts 393 and 396 had been granted for motor carriers certified by and registered with ODOT as farmers, without limiting the applicability of the exemptions to interstate motor carrier operations within the State boundaries of Oregon, *all* States would have been prohibited from enforcing parts 393 and 396 against farm-plated vehicles from Oregon that traveled through their jurisdiction. The only vehicle-related safety requirements would have been provided through the terms and conditions of the exemptions itself rather then the current safety regulations applicable to other motor carriers operating CMVs in interstate commerce. Given that the exemptions would have automatically preempted any Oregon laws or regulations that were incompatible with its own terms, it is difficult to see how the exemption application could be granted and still withhold Oregon's MCSAP funds as punishment for failure to adopt parts 393 and 396, which ODOT would be prohibited from enforcing during the period of the exemptions. Furthermore, if there were sufficient information to support granting the exemptions, the State would have been considered to have effectively demonstrated that the terms and conditions of the exemptions ensure a level of safety equivalent to or greater than the level of safety obtained by compliance with parts 393 and 396, which would suggest that the State requirements, while significantly less specific than the Federal requirements, are indeed compatible in terms of safety outcomes, and would therefore satisfy MCSAP requirements.

[1] On March 27, 2002, an exemption renewal was granted to the Ford Motor Company (Ford) (67 FR 14765) and General Motors Corporation (GM) (67 FR 14764) submitted on behalf of motor carriers operating certain vehicles built by these manufacturers. These exemptions enable motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by Ford and GM which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria.

DOT Decision

In consideration of the comments submitted in response to the agency's December 26, 2002, notice and for the reasons stated above, the Secretary denies ODOT's application for exemptions from the requirements of 49 CFR parts 393 and 396, on behalf of motor carriers certified by and registered with ODOT as farmers. The exemption application does not demonstrate that the exemptions would achieve a level of safety equivalent to or greater than the level of safety that would be achieved by complying with the Federal regulations. The State of Oregon must adopt State laws or regulations compatible with 49 CFR parts 393 and 396, applicable to motor carriers certified by and registered with ODOT as farmers, that are operating in interstate commerce, in a timely manner, to fulfill its obligations under 49 CFR part 350. The DOT will work with ODOT to ensure to the greatest extent practicable, the continued funding of their CVSP while compatible laws or regulations are being developed.

Issued on: April 30, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–11080 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–22]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain

petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 27, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy R. Adams, (202) 267–8033, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 29, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14729.

Petitioner: Columbia Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 137.1.

Description of Relief Sought: To permit Columbia Helicopters, Inc. to disburse fire-retardant chemicals mixed with water on forest fires using its Boeing Vertol 107 and 234 rotorcraft without complying with the requirements of part 137.

[FR Doc. 03–11021 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sonoma County, CA

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of withdrawal.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent, issued on October 24, 2000, to prepare an Environmental Impact Statement (EIS) for the proposed median widening to accommodate high occupancy vehicle lanes on the United States Highway 101 (U.S. 101) in Sonoma County, California will be withdrawn; and an Environmental Assessment (EA) in lieu of an EIS is being prepared for this proposed highway project.

FOR FURTHER INFORMATION CONTACT: Mr. Maiser Khaled, District Operations—North, Federal Highway Administration, California Division, 980 9th Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), conducted studies of the potential environmental impacts associated with the proposed highway project to widen the U.S. 101 for the purpose of adding high occupancy vehicle lanes through the City of Santa Rosa in Sonoma County, California. During the course of conducting these studies and coordinating with regulatory and resource agencies, it was found that many of the potential environmental issues that led to issuing the Notice of Intent were not significant. In addition, changes to avoid or minimize potential impacts identified in early scoping have been made to the designs. The FHWA has determined that the proposed project is not likely to result in significant impacts to the environment; that an EA would be an appropriate environmental document for the project; and that the Notice of Intent (issued on October 24, 2000, and available on the **Federal Register** of October 30, 2000) should be withdrawn.

The EA will be available for public inspection prior to the public meeting. Comments or questions concerning this proposed action and the determination that an EA is the proper environmental document should be directed to the FHWA at the address provided above.

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

Issued on: April 29, 2003.

Maiser A. Khaled,

Chief, District Operations—North Sacramento, California.

[FR Doc. 03–10985 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 28, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 4, 2003, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0008.

Form Number: None.

Type of Review: Extension.

Title: Pools and Associations—Annual Letter.

Description: The information is collected to determine the acceptable percentage for each pool and association that Treasury Certified companies are allowed credit for on their Treasury Schedule F for authorized ceded reinsurance in arriving at each company's underwriting limitation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 90.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 135 hours.

OMB Number: 1510–0013.

Form Number: FMS Form 2208.

Type of Review: Extension.

Title: States Where Licensed for Surety.

Description: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, ''Surety Companies Acceptable on Federal Bonds''.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 259.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 259.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–10987 Filed 5–2–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 25, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 4, 2003, to be assured of consideration.

Departmental Offices/Community Development Financial Institution (CDFI) Fund

OMB Number: 1559–0014.

Form Number: CDFI Form 0019.

Type of Review: Revision.

Title: New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application.

Description: The purpose of the New Markets Tax Credit (NMTC) Program is to provide an incentive to investor in the form of a tax credit, which is expected to stimulate investment in new private capital that will facilitate economic and community development in low-income communities. Applicants must be certified as CDEs to apply for an allocation of tax credit activity under the NMTC Program.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,500 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Suite 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–10988 Filed 5–2–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 22, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 4, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0805.

Form Number: IRS Forms 5472.

Type of Review: Revision.

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

Description: Form 5472 is used to report information bout transactions between a U.S. corporation that is 25 percent foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine inventory or other costs deducted by the U.S. or foreign corporation are correct.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 103,784.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—17 hr., 42 min.

Learning about the law or the form—3 hr., 4 min.

Preparing and sending the form to the IRS—3 hr., 30 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,569,692 hours.

OMB Number: 1545–1227.

Regulation Project Number: FI–104–90 Final.

Type of Review: Extension.

Title: Tax Treatment of Salvage and Reinsurance.

Description: The regulation provides a disclosure requirement for an insurance company that increases losses shown on its annual statement by the amount of estimated salvage recoverable taken in account.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1254.

Regulation Project Number: FI–34–91 Final.

Type of Review: Extension.

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks.

Description: Paragraph (d)(3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section 1.166–2(d)(3) is necessary to monitor the elections.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 200.

Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 50 hours.

OMB Number: 1545–1824.

Regulation Project Number: REG–139768–02 NPRM and Temporary.

Type of Review: Extension.

Title: Excise Tax Relating to Structured Settlement Factoring Transaction.

Description: The regulations provide rules relating to the manner and method of reporting and paying the 40 percent excise tax imposed by section 5891 of the Internal Revenue Code with respect to acquiring of structured payment rights.

Respondents: Business or other for-profit, Individuals and households.

Estimated Number of Respondents/ Recordkeepers: 4.

Estimated Burden Hours Per Respondent: 2 hours.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–10989 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 29, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 4, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0166.

Form Number: IRS Forms 4255.

Type of Review: Extension.

Title: Recapture of Investment Credit.

Description: Internal Revenue Code (IRC) section 1.47 requires that taxpayers attach a statement to their return showing the computation of the recapture tax when investment credit property is disposed of before the end of the recapture period used in the original computation of the investment credit.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 27 min.

Learning about the law or the form—1 hr., 35 min.

Preparing, copying, assembling and sending the form to the IRS—1 hr., 46 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 196,200 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–11042 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8824

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8824, Like-Kind Exchanges.

DATES: Written comments should be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Like-Kind Exchanges.

OMB Number: 1545–1190.

Form Number: 8824.

Abstract: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under Internal Revenue Code section 1031. It is also used to report the deferral of gain under Code section 1043 from conflict-of-interest sales by certain members of the executive branch of the Federal government.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 2 hrs., 29 min.

Estimated Total Annual Burden Hours: 499,865.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–11048 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8615

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8615, Tax for Children Under Age 14 Who Have Investment Income of More Than $1,400.

DATES: Written comments should be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax for Children Under Age 14 Who Have Investment Income of More Than $1,400.

OMB Number: 1545–0998.

Form Number: Form 8615.

Abstract: Under Internal Revenue Code section 1(g), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to compute the child's tax on his or her unearned income and earned income, if any.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 331,128.

Estimated Time Per Respondent: 1 hr. 40 min.

Estimated Total Annual Burden Hours: 552,984.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–11049 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–29, Model Amendments and Prototype Program for SIMPLE IRAs.

DATES: Written comments should be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Model Amendments and Prototype Program for SIMPLE IRAs.

OMB Number: 1545–1543.

Revenue Procedure Number: Revenue Procedure 97–29.

Abstract: Revenue Procedure 97–29 provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters and provides permissive amendments to sponsors of nonSIMPLE IRAs.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 3,205.

Estimated Time Per Respondent: 8 hours, 4 minutes.

Estimated Total Annual Burden Hours: 25,870.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–11050 Filed 5–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for applications for assistance under the ''Per Diem Only'' component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, funding priorities, application process, and amount of funding available

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. Eastern Time on June 19, 2003. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the interim final rule published in the **Federal Register** on March 19, 2003, §§ 61.0–61.82.

Submission of Application: An original completed and collated grant application (plus three copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible programs that have not previously applied for or received per diem in connection with a grant (see 38 CFR 17.700 through 17.731(repealed) and interim final rule, published in the **Federal Register**, March 19, 2003, §§ 61.0 through 61.82). Public Law 107–95, §§ 5(a)(1), the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, and 2064 authorizes this program. The program has been extended through Fiscal Year 2005. Funding applied for under this notice may be used for aid for service centers and supportive housing. Funding will be in the form of per diem payments issued to eligible entities for the period of July 1, 2003, to June 30, 2006, subject to availability of funds and re-authorization of the program past September 30, 2005. For eligibility criteria, please refer to the interim final rule published in the **Federal Register** on March 19, 2003, §§ 61.30, 61.31, and 61.32.

Grant recipients who received prior year funding for acquisition, renovation or new construction need not reapply for per diem for those portions of their programs that were created with grant funds. Per diem for these programs is requested in the grant application and paid at the time of grant project completion. However, if such entities desire per diem for programs not funded by a previous grant application, an application responding to this NOFA is required.

VA is pleased to issue this Notice of Fund Availability (NOFA) for the Homeless Providers Grant and Per Diem Program. The Department expects to award approximately $8 million annually under this NOFA.

Funding available under this NOFA is being offered to help offset the operating expenses of existing state and local governments, Indian tribal governments and faith-based and community-based organizations that are capable of providing supported housing and/or supportive service center services for homeless veterans. The District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, may be considered eligible entities under the definition of ''State'' in the interim final rule, § 61.1 Definitions. It should be noted that VA payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care, which is currently $26.95. Awardees will be required to support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Interested organizations should know that the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with

both mental illness and substance abuse disorders. In addition, many homeless veterans have serious medical problems. Collaboration with VA medical centers, VA community-based outpatient clinics, or other health care providers is an important aspect of assuring that homeless veterans have access to appropriate health care services.

Through the merger of centrally directed funding for VA's Heath Care for Homeless Veterans contract residential treatment programs and the Homeless Providers Grant and Per Diem Program some localities across the country may have lost capacity to provide community-based residential services for homeless veterans. In the interest of restoring some portion of lost capacity to as many locations as possible, VA encourages providers from these localities to submit applications. It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. VA is also implementing new procedures to further this effort. Applicants should be aware of the following:

All awardees that are conditionally selected in response to this NOFA must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection prior to awardees being able to submit request for payment to ensure this requirement is met.

Each per diem-funded program will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program.

Monitoring will include at least an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). It is the intention of VA to develop specific performance targets with respect to housing for homeless veterans. NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

VA encourages all eligible and interested entities to review this NOFA and consider applying for funds to provide service for homeless veterans.

It should be noted that VA expects to announce additional Notices of Fund Availability for construction grants and ''Per Diem Only'' awards in July or August of 2003 so that interested applicants can take advantage of technical assistance and training that will be available as a result of a technical assistance grant.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Pub. L. 107–95, § 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the interim final rule codified at 38 CFR part 61.0. The interim final rule was published in the **Federal Register** on March 19, 2003, the regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $8 million annually is available for the per diem only award component of this program. This funding is expected to be available from July 1, 2003 to June 30, 2006 subject to the availability of funds and reauthorization of the program past September 30, 2005.

Funding Priorities: VA establishes the following three funding priorities in order to: (1) implement the provisions of Pub. L. 107–95 regarding geographical dispersion and non-duplication of service; and (2) partially restore lost capacity resulting from the merger of the Health Care for Homeless Veterans (HCHV) contract residential treatment program and the Homeless Providers Grant and Per Diem Program. In this round of ''Per Diem Only'' funding, VA expects to award funding for approximately 800 community-based supported housing beds.

The Urban Institute's analysis of data collected through the 1996 Survey of Homeless Providers and Clients indicates that 21 percent of the homeless population is found in rural and suburban locations. Over the last 8 rounds of grants, VA awarded approximately $63 million to help establish 271 projects for homeless veterans. Additionally, VA has provided operational funds in the form of per diem for 1,378 beds.

Funding priority 1. Seven states have no grant or per diem funded programs for homeless veterans. These states are Alaska, Idaho, Kansas, Montana, North Dakota, New Hampshire, and Wyoming. Based on the total number of beds expected to be funded in this round, approximately 140 beds (17.5% of the 800 beds expected to be funded) from eligible entities whose projects are located in these states will be selected as the first funding priority. Of those eligible entities in the first funding priority, that are legally fundable, the highest scoring applicants from each state will be funded first, followed by the second highest scoring applicants from each state, until enough projects totaling approximately 140 beds are identified for funding. The goal will be to fund approximately 20 beds in each of the seven states that currently have no grant or per diem funded beds. Applicants not funded in this priority will be placed in the third funding priority.

Funding priority 2. Also, only three grant and per diem-funded programs are affiliated with Indian tribal governments. Based on the total number of beds expected to be funded in this round, approximately 140 beds (17.5% of the 800 beds expected to be funded) from Indian tribal governments will be selected in the second funding priority. Of those Indian Tribal Governments in the second funding priority, that are legally fundable, the highest scoring applicants will be funded first, until enough projects totaling approximately 140 beds are identified for funding. Applicants not funded in this priority will be placed in the third funding priority.

Funding priority 3. Finally, VA is encouraging interested, state and local governments, and faith-based, and community-based organizations to apply for funding under this NOFA. Based on the total number of beds expected to be funded in this round, approximately 520 beds (65% of the 800 beds expected to be funded) from the eligible entities that are state and local governments, and faith-based and community-based organizations, along with those applicants not selected in the first or second priority will be considered in the third funding priority. Of those eligible entities that are legally fundable, the highest-ranked applications, for which funding is available, will be selected for eligibility to receive per diem payment in accordance with their ranked order until enough projects totaling approximately 520 beds are identified for funding or until funding is expended.

Methodology: VA will review all non-capital grant recipients in response to this notice of funding availability. Then VA will group the applicants into the

funding priorities categories. Applicants will then be ranked within their respective funding category based on score and any ranking criteria set forth in that funding category only if the applicant scores at least 500 cumulative points from paragraphs (b) (c) (d) (e) and (i) of the interim final rule published in the **Federal Register**, March 19, 2003, § 61.13.

The highest-ranked application for which funding is available, within the highest funding category, will be conditionally selected for eligibility to receive per diem payment in accordance with their ranked order until VA reaches the projected bed totals for each category. If funds are still available after selection of those applications in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in the interim final rule § 61.32.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application, Interim Final Rule, and NOFA. Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: April 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–11096 Filed 5–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the technical assistance grant component of VA's Homeless Providers Grant and Per Diem Program. This notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus two completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. Eastern Time on June 4, 2003. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the interim final rule codified at title 38 Code of Federal Regulations (CFR) part 61.0.

Submission of Application: An original completed and collated grant application (plus two copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, FL, 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 North 46th Street, Suite C–100, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible non-profit entities with expertise in preparing grant applications relating to the provision of assistance for homeless veterans to: Provide technical assistance to those non-profit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under the interim final rule, published in the **Federal Register**, March 19, 2003, or to apply for other grants from any source for addressing the problems of homeless veterans.

Pub. L. 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this program. Funding applied for under this notice may be used for: (a) Group or individual seminars providing general instructions concerning grant applications; (b) Group or individual seminars providing instructions for applying for a specific grant; or (c) Group or individual instruction for preparing analyses to be included in a grant application. Seminars (course of instruction) may be delivered in electronic, face-to-face, and correspondence methodologies (*e.g.,* Internet based training, video teleconferencing, computer media such as CD or disk).

Entities that are interested in providing technical assistance should be aware that historically the Grant and Per Diem Program office receives over 1,200 nationwide inquiries per notice of fund availability from prospective applicants. It is estimated that an additional 1,000 inquiries are received at nationwide VA Medical Center Homeless Programs. From these inquiries, VA has seen an increase in the number of applicants each year. Approximately 100 to 300 applications per funding round have been received in past responses to Notices of Fund Availability (NOFAs) under VA's Homeless Providers Grant and Per Diem Program. Those entities applying to provide technical assistance should consider these numbers when establishing their service plans. Grant applicants may not receive assistance to replace funds provided by any State or local government for the same purpose.

It should be noted that VA expects to announce additional Notices of Fund Availability for construction grants and Per Diem Only awards in July or August of 2003. Recipients of technical assistance grant awards should be prepared to offer technical assistance very soon after the technical assistance awards are made so that organizations will have an opportunity to take advantage of technical assistance and training prior to and during the application period for these two additional NOFAs.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Pub. L. 107–95, section 5(a)(1), the Homeless Veterans Comprehensive Assistance Act of 2001 codified at title 38 United States Code (U.S.C.), sections 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the interim final rule codified at title 38 CFR Part 61.0. The interim final rule was published in the

Federal Register on March 19, 2003. The regulations can be found in their entirety in title 38 CFR 61.0 through 61.82. Funds made available under this notice are subject to the requirements of those regulations.

Allocation: Approximately $750,000 is available for the technical assistance grant component of this program. Funding will be for a period not to exceed 1 year from the date of award.

Funding Priorities: None.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application. Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the time frame to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: April 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–11097 Filed 5–2–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
May 5, 2003

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 3

False and Misleading Statements Regarding Aircraft Products, Parts, and Materials; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 3

[Docket No. FAA–2003–15062; Notice No. 03–07]

RIN 2120–AG08

False and Misleading Statements Regarding Aircraft Products, Parts, and Materials

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes additional rules that would prohibit certain false or misleading statements regarding type certificated products, and parts and materials that may be used on type certificated products. The proposals would also allow increased inspection by the FAA of records and parts regarding the quality of aircraft parts. The additional rules are needed to help prevent persons from representing parts as suitable for use on type certificated products when in fact they may not be. The proposals are intended to provide assurance that aircraft owners and operators, and persons who maintain aircraft, have factual information on which to determine whether a part may be used in a given type certificated product application.

DATES: Send your comments by August 4, 2003.

ADDRESSES: Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number ''FAA–2003–15062'' at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly Sharkey, Suspected Unapproved Parts Program Office (AVR–20), Federal Aviation Administration, 45005 Aviation Drive, Suite 214, Dulles, VA 20166–7541; telephone (703) 661–0580, facsimile (703) 661–0113, e-mail *beverly.j.sharkey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to take part in this rulemaking by submitting written comments, data, or views. We also invite comments on 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 about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

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 NPRMs

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 four digits of the Docket number shown at the beginning of this proposed rule. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of 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.

Background

Statement of the Problem

There has been a growing concern about the representation of parts used on aircraft. Under FAA regulations, the person installing parts on an aircraft is responsible for ensuring the parts are airworthy. Because airworthiness cannot be determined simply by inspecting a part, parts installers often have to rely on information provided by the persons who sold them the parts. Most parts in the aviation system are of the quality and condition described in their records. There have been cases, however, in which false or misleading statements in advertisements and other records have led a person installing the part to believe the part was suitable for a particular use when, in fact, it was not.

Currently, there are few regulations concerning false or misleading statements regarding aircraft parts. Further, it may be difficult for the FAA to investigate apparent false or misleading statements because the FAA does not regulate parts distributors.

The FAA proposes to issue additional rules that would (1) help prevent misleading statements by extending the prohibition on fraudulent or intentionally false statements beyond those now covered by Title 14, Code of Federal Regulations (14 CFR) parts 21 and 43; (2) provide a regulation covering fraudulent and intentionally false statements that, if violated, would be addressed by FAA enforcement action; and (3) provide for FAA investigation of representations made regarding the quality of aircraft parts.

Petition for Rulemaking

The FAA received a petition for rulemaking to amend part 21 to prohibit false, fictitious, or fraudulent statements or representations associated with the sale or transfer of aircraft parts. The

petition, submitted by Roger C. Forshee (Docket No. FAA–2000–8053), proposed rulemaking to address aircraft parts that are being offered for sale as ''aircraft quality,'' when, in fact, the quality and origin of the parts are unknown. The FAA denied the petition as a separate rulemaking action because FAA had already undertaken the present rulemaking, which it considers responsive to the issues raised in Mr. Forshee's petition.

Current Requirements

Determining Status of Parts

Persons who own or operate aircraft are responsible for maintaining the aircraft in an airworthy condition. See, for instance, 14 CFR 91.403.

Under 14 CFR 43.13, persons performing maintenance, preventive maintenance, or alterations are required to use materials of such a quality that the aircraft, airframe, aircraft engine, propeller, or appliance after the maintenance is at least equal to its original or properly altered condition. Persons must use replacement products, parts, and materials that will allow them to return the aircraft to service in an airworthy condition.

To determine that a product, part, or material is suitable for use in a particular installation on a type certificated product, the person maintaining the product must use various information sources. For aircraft, the airworthiness certificate and the maintenance records for the airframe and powerplant must be reviewed.

For airframes, engines, propellers, appliances, other parts, and materials, several items must be reviewed. For instance, the part number is important, and it is critical to know whether the part was produced by an FAA production approval holder (PAH) [1] or a PAH approved supplier. If the part is required to be replaced or serviced after a specified time in service, or has a limited shelf life, it is essential to know time in service or time since manufacture.

For a used part, it is important to know whether maintenance has been performed on the part, what was done, who performed the work, and whether the part has been approved for return to service by an appropriately certificated person. If it is a life-limited part, the installer must know the current life status of the part. All of this information is used to determine whether the part may be used in a given application, and whether it must be serviced in any way before use.

Similarly, persons producing aircraft, engines, propellers, appliances, and other parts must use materials and parts that will allow them to produce a product that conforms to the approved design. They obtain materials and parts from various sources. Producers have extensive procedures in place to assure that they are using quality parts, but they, too, must rely on representations made by others regarding the parts and materials.

There are several sources of this information. The status of a part is not completely apparent simply by visual examination, and usually various records must be used.

This may start with an advertisement claiming the part meets FAA standards, or is of aviation quality. On receiving the part, the installer must make sure the part is appropriate for the intended use. Some parts are required to be marked, and those markings contain some of the required information. Markings, however, do not contain information regarding the part's time in service, overhaul, or repair history. Additional information needed may be on an FAA Form 8130–3 (Authorized Release Certificate—Airworthiness Approval Tag), a Joint Aviation Authorities (JAA) Form One (Authorized Release Certificate), or another record completed by a repair station or appropriately authorized person.

Other necessary information may come from a shipping document, invoice, maintenance log, or other record showing the manufacturer, part number, time in service, and other information.

Current Regulations and Laws

Existing laws and regulations partially cover the statements made in parts records regarding quality and condition of such parts. For instance, 14 CFR 21.2 prohibits fraudulent and intentionally false statements, but only on applications for certificates or approvals under part 21, and on records that are kept, made, or used to show compliance with part 21. Part 21 does not cover all distribution and sale of aircraft parts by brokers, dealers, and other persons who are not producing those parts.

Similarly, 14 CFR 43.12 prohibits fraudulent and intentionally false statements, but only on records kept, made, or used to show compliance with part 43. That part applies to the maintenance, preventive maintenance, rebuilding, and alteration of type certificated aircraft. While it covers some records used in distributing parts, it does not cover all of them.

Some criminal sanctions may apply. The Aircraft Safety Act of 2000 added section 38 to Title 18 of the United States Code (18 U.S.C. 38) to safeguard against the dangers posed by the installation of nonconforming, defective, or counterfeit aircraft and space vehicle parts. This law prohibits certain false or fraudulent representations regarding the sale or installation of aircraft and space vehicle parts. Specifically, the law prohibits any falsification or concealment of any material fact concerning any aircraft or space vehicle part; prohibits any materially fraudulent representation concerning any aircraft or space vehicle part; and prohibits the making or use of any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part. The law also prohibits fraudulent representations relating to the export, import, introduction, sale, trade, or installation of aircraft or space vehicle parts. There are criminal sanctions for violations of section 38, as well as civil remedies, such as ordering the destruction of the parts.

Also, 18 U.S.C. 1001, provides criminal penalties for whomever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

Existing laws and regulations also provide the FAA with the means to investigate potential violations. The FAA may conduct investigations, as necessary, to carry out its duties under 49 U.S.C. 40113. Parts dealers and other persons that do not hold FAA certificates, however, are not required to cooperate with the investigation unless the FAA issues a subpoena.

General Discussion of the Proposals

New Part 3

The additional rules proposed here would not fit well within any existing CFR part. The FAA proposes to create a new part 3 that would contain rules that apply broadly. It would have two sections, dealing with applicability (§ 3.1) and false and misleading

[1] Production approval holders are persons that have been approved by the FAA to produce aircraft products or parts. Production approvals include parts manufacturer approvals (PMA) (Part 21, Subpart K), production certificates (PC) (Part 21, Subpart G), technical standard order authorizations (TSAO) (Part 21, Subpart O), and approved production inspection systems (APIS) (Part 21, Subpart F).

statements regarding aircraft parts (§ 3.5).

Aircraft and parts may be bought and sold, and records about them created, by various persons, some of which are currently subject to FAA regulation, such as manufacturers (see part 21), repair stations and mechanics (see parts 43, 65, and 145), and air carriers or other aircraft operators (see parts 119, 121, 125, and 135). These proposals would also cover persons who are not currently directly regulated by the FAA, such as distributors and brokers. Note that 18 U.S.C. 38 applies to both certificated and non-certificated persons.

Eventually part 3 may contain other rules of broad applicability.

Section 3.1 Applicability

This part applies to persons engaged in aviation-related activities, as set forth in this part.

Section 3.5(a) Applicability of this Section

Paragraph (a) would set forth the applicability of this section. The section would apply to all records regarding aircraft and aircraft products, parts, and materials, except that paragraph (c) of this section does not apply to records made under part 43, Maintenance, preventive maintenance, rebuilding, and alteration. That part already has a section prohibiting intentional falsification and fraud (§ 43.12), and other sections that govern the content and meaning of records under that part, such as § 43.2, Records of overhauling and rebuilding; and § 43.9, Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records. For this reason, the new requirements of proposed § 3.5(c) would not be necessary for part 43 records. While part 43 already contains prohibitions against false or fraudulent statements, it does not address misleading statements. This proposal intends to address misleading statements in records including those required under part 43 by applying proposed § 3.5(d).

Section 3.5(b) Terms Used in this Section

Paragraph (b) would define two terms used in this section.

The term ''product'' means an aircraft, aircraft engine, or propeller. This is the same meaning as in § 21.1(b).

The term ''record'' includes all forms of records, including paper, microfilm, identification plates, stamped marks on parts, bar codes, and electronic records. ''Record'' includes logbooks, inspection records, reports, advertisements, and labels. The term is defined broadly to include any means that communicates to aircraft owners, operators, producers, mechanics, and repairmen the airworthiness of a type certificated product, or acceptability of a part or material for use on type certificated products. Examples of marks on parts include the marks required under § 45.14 on critical components and the marks required under § 45.15 on parts produced under a PMA. An example of an electronic record is a company's web page that represents the quality of aircraft parts the company is offering for sale.

There are other terms used in this proposal that are not specifically defined in proposed § 3.5(b) Throughout the FAA's enabling statute and regulations, there are various words and phrases used to describe aircraft parts, including such terms as appliance, equipment, apparatus, component, accessory, assembly, airframe, and appurtenance. The FAA has attempted to avoid being unduly wordy, yet to use the words in a manner consistent with the statute, the regulations, and with common industry practice. The FAA, therefore, refers throughout the proposed rule to ''part or material for use on a type certificated product.''

In this proposal, the term ''part or material for use on a type certificated product'' is used extensively, but is not defined in the rule itself. ''Aircraft part'' frequently is used broadly in the industry to refer to anything that is, or could be, used as a piece of an aircraft, aircraft engine, or propeller, including appliances and component parts. The FAA proposes to use this term in the same manner here. For instance, the word ''part'' is used in § 21.303 to refer to all portions of an aircraft, including standard parts. Software, as used in some flight systems and instruments, also is considered a ''part'' for purposes of these rules. Under this proposed rule, false or misleading statements regarding the acceptability of the software would be prohibited.

''Material'' normally is used to refer to the substances of which a thing is made or composed. It generally includes such things as sheet metal, unformed wood, and bolts of fabric. The concepts of ''part'' and ''material'' often overlap in common usage, but for this proposed rule it does not matter whether an item is a ''part'' or a ''material,'' both are considered under this proposal.

The proposed rule also refers to the ''acceptability'' of aircraft products, parts, and materials. There are various ways a part can be shown to be ''acceptable.'' The most common is for the part to be an approved part. ''Approved,'' under part 1, means approved by the Administrator, and, in this context, generally means the part was produced by a PAH or a PAH approved supplier. To be acceptable, used parts must also have been maintained in accordance with the regulations. This derives from § 43.13 which requires that the condition of the product or part used in maintenance be at least equal to its original or properly altered condition.

The FAA intends these terms to be interpreted broadly to fulfill the purposes of the rule. The FAA specifically requests comments on whether these terms are sufficiently clear, whether they should be defined in the regulations, or whether different terms should be used.

This proposal does not cover statements regarding fluids, that is, substances that are used to service an aircraft or product or that may be added to an engine, container, or fitting. Fluids include fuel, oil, grease, and metal treatments. Fuel and other fluids are not approved (nor does FAA develop the standard) as a material under part 21, Subpart K—Approval of Materials, Parts, Processes, and Appliances. The FAA only judges acceptability of a fluid for use in a proposed type design. The FAA recognizes that false or misleading records regarding fluids could have a detrimental safety impact. The FAA is considering adding to the final rule prohibitions on false or misleading statements regarding fluids. We request comments on whether there is a significant problem with false or misleading records regarding fluids used in aviation, and whether the final rule should apply to records regarding fluids.

Section 3.5(c) Prohibition Against False Statements

The proposed rules would apply to statements representing the airworthiness of a product for which the FAA has issued a type certificate; or the acceptability of any part, or material for use on a product for which the FAA has issued a type certificate. The FAA issues type certificates for aircraft, aircraft engines, and propellers. Applying the proposed rules to type certificated products means, for instance, that the proposed rules would not apply to aircraft for which Special Airworthiness Certificates in the experimental category (experimental aircraft) have been issued, or military aircraft.

Paragraph (c)(1) would prohibit any fraudulent or intentionally false statement in any record that represents the airworthiness of a type certificated product, or the acceptability of any part

or material for use on type certificated products. Such records are the kind that are relied on by owners, operators, producers, and maintainers to determine the airworthiness of an aircraft, or the acceptability of aircraft products and parts for a given application; therefore, they must be truthful.

Paragraph (c)(2) would prohibit any reproduction or alteration, for fraudulent or intentionally false purpose, of any record that represents the airworthiness of a type certificated product, or the acceptability of any part or material for use on type certificated products.

Paragraph (c) is modeled on similar provisions elsewhere in the regulations, such as §§ 21.2, 43.12, 61.59, and 65.20. These provisions have long been in the regulations and have worked well.

An intentionally false statement consists of (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity. A fraudulent statement consists of these three elements, plus (4) it was made with the intent to deceive, and (5) action was taken in reliance upon the representation. See, *Hart* v. *McLucus,* 535 F.2d 516, 519 (9th Cir. 1976). There have been many cases under the existing rules interpreting these terms, which will assist in understanding the proposed rule.

Some differences from the current rules should be noted, however. Currently, § 21.2 refers to ''* * * a false entry in any record or report that is *required to be kept, made, or used* to show compliance with any requirement for the issuance or the exercise of the privileges of any certificate or approval issued under this part.'' (Emphasis added.) For the most part, although a person may be required to show that an acceptable part was installed on an aircraft, the rules do not require any *particular* records to be used to document aircraft products, parts, and materials, and, as discussed above, various records are used. To avoid any misunderstanding, the word ''required'' is not included in the proposed rule. The proposal is intended to cover any records that, in fact, represent the airworthiness of a type certificated product, or the acceptability of a part or material for installation on a type certificated product.

In addition, the words ''kept, made, or used'' that appear in current rules are not used in the proposed § 3.5(c); rather, the proposal refers to ''any record that represents the airworthiness. * * *'' The words of the current rules might be read by some as focusing on the intent of the person making the record. It is the FAA's view, however, that the important issue is whether the record represents to the reader that an aircraft is airworthy, or a part is acceptable, because the reader may rely on the record in making decisions that affect safety. The proposed wording is intended to avoid confusion on this point.

Section 3.5(d) Preventing Misleading Statements

Proposed § 3.5(d) would provide that no person in any record may express or imply, or cause to be expressed or implied, that a type certificated product is airworthy, or a part or material is acceptable for installation on type certificated products, unless the person can show with appropriate records the representation is true. Under this rule, a person would have to have a demonstrable basis for stating or implying the aircraft is airworthy, or part or material is acceptable for installation. Examples of a demonstrable basis include that the part was produced under a production certificate (PC), parts manufacturer approval (PMA), or technical standard order authorization (TSOA).

There currently is little regulation concerning misleading statements. Some statements may be literally true, but mislead. A statement that a part ''fits'' a Cessna 172, for instance, may be literally true. But, that statement may mislead a potential buyer to think the part is acceptable for use in a Cessna 172, when it may not be.

In advertisements, shipping papers, inserts in parts boxes, and other records the FAA has seen examples of statements that are worded in such a way that a person may be misled to believe the part is approved by the Administrator or is otherwise acceptable, when neither fact has been demonstrated. Proposed § 3.5(d) is intended to prevent such statements.

In developing this proposal, we have reviewed the Federal Trade Commission's (FTC) regulation of deceptive advertising, and discussed with the FTC staff the relevance to this proposal of their approach. Although our purposes are quite different—the FTC is concerned primarily with consumer protection, whereas we are concerned exclusively with aviation safety—we've concluded that the FTC's regulatory approach to deceptive advertising establishes an excellent model for this proposal. Therefore, we intend to rely heavily on precedents established by the FTC in resolving interpretative issues that may arise in the application of this proposed rule. The following discussion is, therefore, derived from our review of the FTC regulatory scheme.

For the purposes of this rule a misleading statement requires (1) a material representation or omission (2) that is likely to mislead the consumer (3) acting reasonably under the circumstances.

Misleading statements include misrepresentations as well as a failure to disclose material information regarding the product. A misrepresentation is an express or implied statement that is contrary to fact. A misleading omission occurs when information necessary to prevent a representation, or a reasonable expectation or belief, from being misleading is not disclosed. In determining whether the omission is deceptive or misleading, we will examine the overall impression created by the representation. Unlike the definition of an intentionally false statement, there does not have to be knowledge that the statement would mislead; nor must there be the intent to deceive. The issue with which the FAA is concerned is whether the representation is likely to mislead rather than whether it causes actual deception.

A representation or omission is considered material if it is likely to affect the consumer's decisions about the product. The claim must be likely to be believed and acted on in a certain way, and injury must be found likely to exist because of the representation. Injury exists if the consumer would have chosen differently but for the deception. Some statements, especially those affecting health or safety, are presumptively material in nature.

Finally, a representation or omission will be considered from the perspective of a reasonable consumer under the circumstances. In evaluating a particular representation, we will look to the effect of the representation on a reasonable member of the targeted audience. To be considered reasonable, an interpretation of a statement does not have to be the only one. For instance, if an advertiser's representation suggests more than one meaning to a reasonable consumer, one of which is misleading, the advertiser would be liable for the misleading interpretation.

Proposed § 3.5(d) is also intended to prevent persons from stating or implying that a part is acceptable when the person does not know whether it is acceptable. An example is where a person obtains surplus military parts that lack sufficient documentation to determine whether the parts are approved or acceptable for use on type certificated products, yet advertises them as acceptable parts. Under this proposed paragraph, the person would

be prohibited from advertising the part as acceptable for use in type certificated products.

The ''appropriate records'' that would form a basis for stating or implying that a part is acceptable would be the records that a mechanic or repairman would use in determining that a part properly could be installed on an aircraft. Guidance on such records is found in Advisory Circulars (ACs) 21–9, 20–62, and 00–56, Voluntary Industry Distributor Accreditation Program.

Section 3.5(e) FAA Airworthiness Standards

Proposed paragraph (e) would apply to records that make statements regarding FAA airworthiness standards. It would provide that if a person expresses or implies, or causes to be expressed or implied, in any record that a product, part, or material meets FAA airworthiness standards, the person must ensure that either (1) the product, part, or material was produced under an FAA production approval, such as a production certificate, parts manufacturer approval, or technical standard order authorization; or (2) the record clearly and expressly states that the part was not produced under an FAA production approval.

To obtain an FAA design approval, an applicant must show compliance with FAA airworthiness standards, which the FAA adopts to establish the minimum level of safety. They are set forth in 14 CFR parts 23–35. Under 14 CFR part 21, these approvals are issued in the form of type certificates, changes to type certificates (supplemental and amended type certificates), TSOAs, and PMAs. The FAA also issues production approvals to persons who demonstrate that they can consistently produce a product or part that meets the design standard. An example of a production approval is a production certificate under part 21 to manufacture the Boeing 777. Some approvals include both a design approval and a production approval, such as a TSOA and a PMA.

Statements that a product, part, or material is produced under a production approval essentially is a statement that it meets FAA airworthiness standards. For instance, a statement that a part ''is PMA'd'' is heavily relied on by the industry to show the part is acceptable for use. If the statement is false or misleading, the person installing the part could install a part that does not meet the FAA airworthiness standards and may create a danger in flight. Similarly, if a record states that a part ''meets TSO XXX'' it implies the part was made under a TSOA or otherwise has an approved design and has been produced under an FAA approval. If this is not true, the product or part may not in fact be eligible for installation. Standard parts, described in § 21.303(b)(4) as nuts, bolts, etc., conform to established industry of U.S. specifications. The FAA does not require that standard parts be produced under an FAA production approval. The subject of standard parts is discussed in more detail later in this document.

Section 3.5(f) Inspection

To allow the FAA to better monitor compliance with this proposed rule, § 3.5(f) would provide that the FAA could inspect aircraft, and aircraft products, parts, and materials to determine compliance with the statute and § 3.5. This would apply to any person who expressly or by implication represents, or causes to be expressly or by implication represented, in any record that a type certificated product is airworthy, or a part or material is acceptable for installation on a type certificated product. This would give the FAA more tools to use in investigating possible false and misleading statements under proposed § 3.5.

The design, manufacture, and maintenance of aircraft products, parts, and materials used in the civil aviation industry are highly regulated. Promoting the integrity of records in the system is equally important. If any person chooses to represent a type certificated product as airworthy or a part or material as acceptable for installation on a type certificated product, that person must be prepared to show why the representation is true. The proposed rule would not apply to persons who do not represent parts as acceptable for aviation products. Persons who sell items without representing those parts as acceptable for type certificated product use would not be subject to § 3.5(f).

Application of the Proposed Rule

This proposed rule refers to statements that a type certificated product is airworthy, or that a part or material is acceptable for installation on type certificated product. These terms are intended to cover any statements that express or imply the product, part, or material is acceptable for use on type certificated products.

A statement regarding the airworthiness of a type certificated product or the acceptability of a part or material for installation on type certificated product includes records that represent that the product, part, or material is approved by the FAA, or otherwise is acceptable for use in maintenance, preventive maintenance, rebuilding, alteration, or production of type certificated products, airframes, aircraft engines, propellers, appliances, or component parts. These statements may take many forms.

Statements made in advertisements or shipping documents that compare an aircraft part to aviation standards or FAA approvals, such as ''aviation quality,'' ''TSO'd,'' ''FAA certification,'' ''FAA/PMA,'' and ''STC'd,'' imply the part has been found acceptable for installation on type certificated products. Similarly, statements made regarding the ability to use an aircraft part on type certificated products, such as ''direct replacement for aircraft XX,'' ''ready to use in your aircraft,'' ''reproduction of part number XX,'' ''fits aircraft model number XX,'' ''original,'' ''direct replacement,'' and ''replaces aircraft model XX part number YY,'' can be reasonably interpreted to mean that all FAA requirements for use on a specific type certificated product have been met. Under the proposed § 3.5(c) and (d), such statements would be prohibited if they were false or misleading. If a record states the part ''fits aircraft model number XX,'' but the part is not approved or otherwise acceptable for use on the aircraft, the statement would be in violation of the proposed rule. Under proposed § 3.5(e), the person making the statement must ensure that either the product, part, or material was produced under an FAA production approval, or must state the product, part, or material was not produced under an FAA production approval.

Less direct statements, but just as misleading, include statements that suggest the producer of the part was authorized to produce approved parts, when in fact the part being sold is not approved. Statements on an invoice or advertisement, such as ''authorized supplier to (an aircraft producer)'' imply the part is made under that authorization, unless the record clearly states the part is not approved. Statements on an invoice letterhead that the producer is a PMA holder imply the part was made under the PMA, unless the record clearly states that it was not.

The use of a part number, or a number confusingly similar to a part number, used on an aircraft product, part, or material that is approved by or acceptable to the FAA, is a direct method of stating or implying the product, part, or material is approved or acceptable to the FAA. For instance, it is a common practice for PMA holders who produce replacement parts to use a part number that is the same as the original part, with a prefix or suffix to

show who produced the replacement part. This practice helps in identifying what parts may be used as replacements for the original, and the FAA allows this practice.

The proposed §§ 3.5(c) and (d) would prohibit the use of such numbers when they are false or misleading. For instance, if a producer assigned a part number to a replacement part that was the same as, or confusingly similar to an approved part, but the replacement part was not approved or acceptable, the producer would be in violation of the proposed §§ 3.5(c) or (d). The producer of the part might also be in violation of § 3.5(e) unless the producer clearly stated the part was not produced under an FAA production approval.

Another example is a PAH that produces a part with both a type-certificated application and a military application. The military version may not be produced under all the requirements of the FAA production approval, including design and quality control standards. If the military part is assigned the *same* part number as the FAA-approved version, that number could erroneously imply the part is acceptable for use on type certificated product. That practice would constitute a violation of the proposed § 3.5(d). A military part, however, may be eligible for installation on a type-certificated product provided the documentation accompanying the part establishes the part meets the standards to which it was manufactured, interchangeability with the original part can be established, and the part is in compliance with all applicable airworthiness directives (ADs).

Another example is where a PAH contracts with a supplier to produce a given number of approved parts under the PAHs approval. The PAH is responsible under the regulations for ensuring the parts conform to the approved design and that all approved processes and materials were used in the production of the parts. If the supplier produces additional parts not authorized by the PAH and marks them with the PAHs part number, that supplier is stating or implying that those additional parts were made under the PAHs approval when in fact they were not. The additional parts are not approved parts.

Illustrated parts catalogues (IPC) are another type of document that may contain misleading statements regarding what parts are approved or acceptable for use in maintaining an aircraft. Manufacturers typically publish IPCs to inform their customers of sources of replacement parts, and operators and repair stations widely use IPCs for that purpose. Some manufacturers make little or no effort to ensure their IPCs are current or the identified suppliers have obtained FAA production approvals (for example, PMA). Thus, a manufacturer's ''current'' IPC might include suppliers who not only do not have PMA, but whose contracts with the manufacturer may have been canceled for various reasons. Yet many parts buyers assume that, because a supplier is listed in an IPC, their parts are acceptable. The FAA recognizes that for business reasons the manufacturers often do not wish to expend the resources necessary to ensure the IPC is always current. The FAA also recognizes, however, that given the potential reliance on the IPC it should avoid misleading people who use it to maintain aircraft. The IPC would comply with this rule if it clearly stated that the suppliers listed may not currently hold FAA approvals and the maintainer must determine whether the supplier's parts can be used.

Other statements may be misleading when representing a part's life status, such as the cycles or hours accumulated on the part. For instance, a record may indicate that a life-limited part has no time in service (is new) when, in fact, the part actually has some time in service. This may influence an aircraft owner to use the part beyond its service life. Such a statement would be in violation of either § 3.5(c) or (d), or both.

Continuing Responsibility of Owners, Operators, Mechanics, and Repair Stations

The owner or operator of an aircraft is responsible for maintaining the aircraft in an airworthy condition. *See,* for instance, § 91.403(a). Further, each person maintaining or altering an aircraft, or performing preventive maintenance, is responsible for ensuring the aircraft will be at least equal to its original or properly altered condition. *See* § 43.13(b). The proposed § 3.5 would not change these responsibilities.

These proposed rules are intended to assist owners, operators, and maintainers by prohibiting false and misleading statements in the records they rely on. But, these rules would not replace the current responsibility of owners, operators, and maintainers to obtain appropriate documentation for aircraft and products, parts, and materials. For instance, even though these rules would prohibit false and misleading statements in advertisements, advertisements alone are not sufficient documentation for parts used to maintain or alter aircraft. Before a person returns an aircraft to service following maintenance, preventive maintenance, or alteration, the person must have a reasonable basis to believe the aircraft will be in at least its original or properly altered condition, in accordance with § 43.13. To do so, the person must take care to obtain and examine the records on replacement and alteration products, parts, and materials, to ensure they are appropriate for the task. FAA Advisory Circular (AC) 20–62 has further guidance regarding the documentation that should be used.

Relationship of Proposal to Standard Parts

Standard parts are described in § 21.303(b)(4) as nuts, bolts, etc., conforming to established industry or U.S. specifications. The FAA does not require they be produced under an FAA production approval. They are not unique to aviation and may be used in many different applications outside civil aviation.

Parts distributors and others, however, may actively advertise to the aviation industry as being able to provide standard parts for use in aviation. Records regarding standard parts would be subject to this proposed rule where the records express or imply that the standard parts are suitable for use on type certificated products. Records would also be subject to the proposed rule if, under the circumstances of the sale, it was apparent the standard parts were being sold for use on type certificated products, such as when the parts are sold to an aircraft producer. And, a record would be subject to the proposal if it expresses or implies that a part conforms to a particular standard. In such cases, the record would have to be not fraudulent or intentionally false under proposed § 3.5(c), and not misleading under proposed § 3.5(d).

Relationship of Proposal to Aircraft Parts Distributors

The FAA does not certificate or regulate aircraft parts distributors. Distributors include brokers, dealers, resellers, or other persons and agencies engaged in the sale of parts that might be installed in type-certificated aircraft, aircraft engines, propellers, and appliances.

Past initiatives addressing direct FAA certification and regulation of distributors concluded that detailed regulation is not practicable because of the potential size of the group, estimated at several thousand entities, and the FAA's limited resources to conduct the required oversight. The FAA does, however, recognize the significant role distributors play in providing parts to the aviation industry,

and that the documentation they provide is critical in establishing acceptability of a part for use on type certificated products. When distributors do not provide necessary or forthright documentation, the airworthiness of a part is questionable.

The FAA strongly endorses the voluntary industry oversight of distributors through third-party accreditation. In 1996, the FAA published AC 00–56, Voluntary Industry Distributor Accreditation Program. Under this type of accreditation, an independent entity, other than the distributor and the buyer, provides a quality system standard that describes acceptable system elements, including mandatory documentation, which are subsequently audited for adherence to that standard. Parts procured from such ''accredited distributors'' should convey an assurance to the buyer that the parts are the quality stated and that the appropriate documentation is on file at the distributor's place of business.

The Aviation Suppliers Association (ASA) is the trade association that represents the interests of the aircraft parts distributor community. ASA was formed in 1993 and was one of the organizations that helped FAA in developing the Voluntary Industry Distributor Accreditation Program. ASA currently maintains the program database that tracks distributors accredited in accordance with AC 00–56. Since 1998, the number of accredited distributors has increased from 86 to 218.

Although increasing numbers of distributors are restructuring company procedures to meet the accreditation requirements, some distributors continue to be less than forthright in their documentation associated with the sale of aircraft parts. The FAA's Suspected Unapproved Parts (SUP) Program Office database shows that parts distributors were either the primary or secondary focus in 22 percent of all SUP investigations conducted between 1998 and 2001. Approximately one-fourth of all SUP investigations relates to distributors.

The proposed rule would apply to all persons who make records regarding the airworthiness of a type certificated product, or the acceptability of any part or material for use on a type certificated product, whether the person holds an FAA certificate or not. It would, therefore, apply to parts distributors, which are the source of many of the parts for mechanics, repair stations, and others who maintain aircraft.

Relationship of Proposal to Compliance and Enforcement

The FAA could take compliance and enforcement action for violation of the proposed rules. The action could range from counseling and corrective action through civil penalties (currently $1,100 per infraction) under 49 U.S.C. 46301 and 14 CFR 13.15 and 13.16, and suspension or revocation of an FAA certificate held by the violator under 49 U.S.C. 44709 and 14 CFR 13.19. The action taken by the FAA would depend on all the circumstances of the violation.

If the FAA believed that the person had made misleading statements in violation of proposed § 3.5, for instance, in the first instance the FAA might first seek to have the person take corrective action to avoid misleading owners, operators, maintainers, and others in aviation. If the statements were not corrected, the FAA might take stronger action. Depending on the seriousness of the offense, however, even the first instance of making misleading statements in violation of the rule could result in the FAA taking strong enforcement action.

If the evidence establishes that a person made fraudulent or intentionally false statements, however, the FAA generally takes the strongest enforcement action, including revocation of any FAA certificates held by the person. In appropriate cases, the FAA refers such cases for criminal investigation.

Relationship of Proposal to Experimental Aircraft

Not all experimental aircraft must be maintained in accordance with part 43, and for most parts, the regulatory standards are far less stringent than for aircraft that must be maintained under part 43. Although it is important that people who build and maintain these aircraft have accurate information on which to make informed decisions as to which parts to use, applying the rule to experimental aircraft, parts, and materials may have an unduly chilling effect on the experimental aircraft community. Persons who build experimental aircraft are responsible for evaluating claims and making decisions accordingly regarding which parts and materials to use on such aircraft. They use both FAA-approved products and parts, and items not otherwise considered to be aviation products and parts. The FAA is not aware of significant problems with false or misleading statements regarding products, parts, and materials used in experimental aircraft.

For instance, an engine manufacturer that does not have any FAA design or production approval may be aware that its engine is used for experimental aircraft. That manufacturer may provide information to builders regarding the engine's performance, maintenance requirements, and so on. If proposed § 3.5 were to apply to those statements, the manufacturer might hesitate to provide such information, because it may not have developed that information using all the rigorous requirements called for in the FAA regulations for FAA-approved engines. The FAA does not want to discourage such a manufacturer from providing information to persons who build experimental aircraft. Thus, the manufacturer could provide such information to the experimental aircraft builder without being subject to proposed § 3.5, so long as the information did not express or imply that the engine was acceptable for use in a type certificated product. The manufacturer would be subject to proposed § 3.5(e), however, if it expressed or implied that the engine met FAA airworthiness standards, without also clearly and expressly stating that engine was not produced under an FAA production approval.

This exception for experimental aircraft does not apply, however, if FAA regulations or the terms of the aircraft's airworthiness certificate require certain parts to be approved. Statements made in records regarding these parts, even when installed in experimental aircraft, must be truthful and not misleading. The fact that the part or material is eventually installed on an experimental aircraft does not make the false or misleading statement acceptable.

Relationship of Proposal to Parts for Military Aircraft

Military aircraft are not civil aircraft, and proposed § 3.5 would not apply to parts that are for military aircraft and are not represented to be acceptable for civil application. If the records regarding military parts, by implication, represent, however, that they are acceptable for use in type certificated products, proposed § 3.5 would apply.

Some former military aircraft have been put into civil use and are now operated on a special or standard airworthiness certificate. Some unique parts that otherwise are only manufactured for military designed aircraft may be needed to maintain these aircraft. Records regarding these parts should not state or imply that the parts are acceptable for use in type certificated products, other than the

product for which acceptability has been determined.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there are no new information collection requirements associated with this proposed rule.

The FAA has considered whether proposed § 3.5(d) would create a burden within the meaning of the Paperwork Reduction Act. That section would require that if a person made certain representations regarding type certificated products, or parts and materials to be used on type certificated products, the person would have to have records to support those representations (except for statements made under part 43, as explained above). It is FAA's experience that the industry in the normal course of its activities transfers the records called for under the proposed rule. For instance, when air carriers buy parts, the usual and customary practice is for the air carrier to require the dealer to provide the records that substantiate the source and quality of the part. The major practical effect of the proposal would be to provide for FAA enforcement action if those records proved to be intentionally false, fraudulent, or misleading within the meaning of the rule.

Accordingly, the FAA has determined that the resources necessary to comply with the proposal are excluded from the ''burden'' under 5 CFR 1320.3(b)(2), and there are no information collection requirements associated with this proposed rule within the meaning of the Paperwork Reduction Act.

The FAA requests comments on this determination. Individuals and organizations may submit comments by August 4, 2003, and should direct them to the address listed in the **ADDRESSES** section of this document.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when changing regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to all persons who may make or cause to be made records regarding products, parts, or material for use on type certificated products, it could if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically, requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only on a 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 also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that the economic impact of this proposed rule does not meet the standards for a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and under the regulatory policies and procedures of the Department of Transportation. The FAA has determined, however, that because of the public interest in the subject of aircraft parts, this proposed rule is considered significant and, therefore, is subject to review by the Office of Management and Budget. This rule will not have a significant impact on a substantial number of small entities; will not constitute a barrier to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Costs

The FAA estimates that the total cost expected to accrue from implementation of the proposed rule to be $176,700 annually in 2000 dollars or $1,241,000 over the next 10 years when costs are discounted at 7 percent. The FAA expects to incur all of the above costs. Costs to industry cannot be quantified with any degree of accuracy, but are expected to be small.

The FAA is seeking cost and benefits data to better quantify the impact of the proposed rule on potentially affected entities. To that extent, the FAA seeks information on the costs and benefits that manufacturers and operators would incur to comply with the proposed rule. Such cost estimates should include equipment costs, modification costs, etc. Documentation such as sources for the cost data should also be provided. Similarly, benefits estimates should include estimates of cost savings, etc. Again, documentation of these estimates should be included.

Benefits

The potential benefits of the proposed rule are enhanced safety to the aviation community and flying public by ensuring that aircraft owners and operators and persons who maintain aircraft have factual information on which to determine whether a part may be used in a given civil aircraft.

Enhanced safety would be achieved because this rulemaking (1) would fill in gaps in the legal and regulatory structure, to extend the prohibition on fraudulent or intentionally false statements beyond those now covered by Title 14, Code of Federal Regulations (14 CFR) parts 21 and 43; (2) would provide FAA enforcement action for some fraudulent and intentionally false statements; and (3) would provide for investigation of representations made regarding the quality of aircraft parts.

For example, unapproved parts manufacturers might be less likely to fraudulently state the parts as coming from the prime manufacturer, and ship them with look-alike packaging and paperwork. Thus, the frequency of a part being a look-alike and unsuitable

for its intended function may be reduced.

Reducing the likelihood of an unapproved part from being installed would lessen the potential for an accident or an incident. The FAA has documented cases of fatal aircraft accidents where unapproved parts (that could have been installed due to false or misleading statements) have been installed on the subject aircraft. Unapproved parts that have been found installed in aircraft involved in accidents include fuel lines, propeller system/drive assemblies, engine bearings, and electrical systems.

Conclusions

Based on the low compliance cost coupled with the potential safety benefits, the FAA concludes that the proposed rule is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, 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 request and consider flexible regulatory proposals and to explain the reason 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.

If an agency determines, however, 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.

For the entities that would be affected by this proposed rule, the FAA expects the annualized compliance costs to be minimal. Thus, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from the public regarding this finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not meet the cost thresholds described above. Further, this proposed rule would not impose a significant cost on small governments and would not uniquely affect those small governments. The requirements of Title II of the Act of 1995, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined, therefore, that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 3

Aircraft, Aviation safety, False, Fraud, Misleading.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add a new part 3 to Chapter I of Title 14, Code of Federal Regulations as follows:

PART 3—GENERAL REQUIREMENTS

Sec.
3.1 Applicability.
3.5 Statements regarding aircraft, and aircraft products, parts, and materials.

Authority: 49 U.S.C. 106(g), 40113, 44701, and 44704.

§ 3.1 Applicability.

This part applies to persons engaged in aviation-related activities, as set forth in this part.

§ 3.5 Statements regarding aircraft, and aircraft products, parts, and materials.

(a) *Applicability of this section.* This section applies to all records regarding type certificated products, and to parts

and materials that may be used on type certificated products, except that paragraph (c) of this section does not apply to records made under part 43 of this chapter.

(b) *Terms used in this section.*

Product means an aircraft, aircraft engine, or propeller.

Record includes all forms of records, including paper, microfilm, identification plates, stamped marks on parts, bar codes, and electronic records. ''Record'' includes logbooks, inspection records, reports, advertisements, and labels.

(c) *Prohibition against false statements.* No person may make or cause to be made—

(1) Any fraudulent or intentionally false statement in any record that represents the airworthiness of a type certificated product, or the acceptability of any part or material for use on type certificated product.

(2) Any fraudulent or intentionally false reproduction or alteration of any record that represents the airworthiness of any type certificated product, or the acceptability of any part or material for use on type certificated product.

(d) *Preventing misleading statements.* No person in any record may express or imply, or cause to be expressed or implied, that a type certificated product is airworthy, or that a part or material is acceptable for installation on type certificated product, unless the person can show with appropriate records that the product is airworthy or that the part or material is acceptable for installation on a type certificated product.

(e) *FAA airworthiness standards.* If a person expresses or implies, or causes to be expressed or implied, in any record that a product, part, or material meets FAA airworthiness standards, the person must ensure that—

(1) The product, part, or material was produced under an FAA production approval, such as a production certificate, parts manufacturer approval, or technical standard order authorization;

(2) The record clearly and expressly states that the part was not produced under an FAA production approval; or

(3) The part is a standard part (such as bolts and nuts) conforming to established industry or United States specifications.

(f) *Inspection.* In order for the Administrator to determine compliance with 49 U.S.C. Subtitle VII and this section, each person who expressly or by implication represents, or causes to be expressly or by implication represented, in any record that a type certificated product is airworthy, or a part or material is acceptable for installation on type certificated product, shall allow the Administrator to—

(1) Inspect and copy records relating to the source and acceptability of the product, part, or material; and

(2) Inspect the product, part, or material.

Issued in Washington, DC, on April 25, 2003.

Beverly Sharkey,

Acting Manager, Suspected Unapproved Parts Program Office.

[FR Doc. 03–10946 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Monday,
May 5, 2003

Part III

The President

Proclamation 7668—Asian/Pacific American Heritage Month, 2003
Proclamation 7669—Older Americans Month, 2003
Proclamation 7670—Law Day, U.S.A., 2003
Proclamation 7671—Loyalty Day, 2003
Proclamation 7672—National Day of Prayer, 2003

Federal Register
Vol. 68, No. 86
Monday, May 5, 2003

Presidential Documents

Title 3—

The President

Proclamation 7668 of April 30, 2003

Asian/Pacific American Heritage Month, 2003

By the President of the United States of America

A Proclamation

America is strengthened by the rich cultural diversity of our people, and we are blessed to be a Nation that welcomes individuals of all races, religions, and cultural backgrounds. The values and traditions of the Asian/Pacific-American community—love of family, entrepreneurship, excellence in education, and community service—have strengthened us as a Nation. During Asian/Pacific American Heritage Month, we celebrate the contributions of these talented and hard-working citizens and recognize their rich legacy of ingenuity, perseverance, and achievement.

Many Asian/Pacific immigrants came to America to discover the promise of our Nation and to realize their dreams. Their contributions were critical in establishing a robust economy. Asian/Pacific Americans also worked tirelessly to build our national railroad infrastructure, paving the way for our western expansion and growth as a world leader. Generations of Asian/Pacific Americans have proudly served our Nation with honor and courage in wars and conflicts, including most recently in Operation Iraqi Freedom and Operation Enduring Freedom. Today, as in the past, their dedication and service to advancing peace in a troubled world upholds the values that make our country strong.

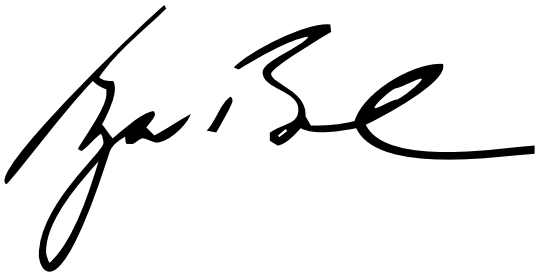
Asian/Pacific Americans are also helping to shape America's future. As entrepreneurs, artists, educators, public servants, scientists, and explorers, they challenge the minds of our next generation, expand commerce and innovation, probe the frontiers of space, and search for cures for the world's diseases. Our children are also inspired by the contributions and sacrifices of dedicated individuals such as inventor An Wang, experimental physicist Chien-Shiung Wu, *Challenger* astronaut Ellison Onizuka, *Columbia* astronaut Kalpana Chawla, and sculptor Isamu Noguchi.

Since the earliest days of America, people from all cultures have traveled to our Nation seeking the promise of freedom, opportunity, and justice. As an integral part of our society, Americans of Asian and Pacific heritage share in the pursuit of this American Dream. I join with all Americans in celebrating this rich and diverse culture, and I encourage every citizen to recognize the role of Asian/Pacific Americans in building and sustaining our Nation.

To honor the achievements of Asian/Pacific Americans, the Congress by Public Law 102–450 as amended, has designated the month of May each year as ''Asian/Pacific American Heritage Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 2003 as Asian/Pacific American Heritage Month. I call upon our citizens to learn more about the history of Asian/Pacific Americans and how they have contributed to the culture and heritage of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11188
Filed 5–2–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7669 of April 30, 2003

Older Americans Month, 2003

By the President of the United States of America

A Proclamation

Advances in medicine, public health, science, and technology are keeping Americans healthier and adding years to our lives. As our population of senior citizens continues to grow, our Nation remains dedicated to fulfilling our promises to these valuable members of our society. This year's observance of Older Americans Month, ''What We Do Makes A Difference,'' recognizes the important contributions of older Americans and the network of services that support them. Older Americans continue to work in a variety of jobs, from teachers, to engineers, to business owners and entrepreneurs, and in so doing bring invaluable experience and leadership skills. Additionally, their wisdom, strength, and compassion reflect the character of our great Nation. During this month, we honor our seniors and thank them for the lessons they teach us and the strong values they instill in families and communities throughout our country.

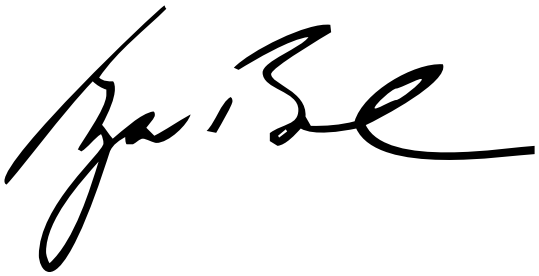
Serving as examples to others, throughout our Nation every day, older Americans are engaging in acts of compassion. Over a half million members of the Senior Corps are volunteering their time and talents to help those in need. Retired doctors, nurses, police, and firefighters are helping communities prepare for emergencies, and countless other older Americans are bringing comfort and care to their families and neighbors. These individuals understand the importance of service, and their efforts are helping to build a more welcoming society. Many food banks, clothing distribution programs, and other social service activities of faith-based and community organizations could not operate without the senior Americans who volunteer in these efforts.

As these individuals continue to work on our behalf, our Nation is working to fulfill our obligations to older Americans by providing them with good health care and other services to enhance their lives. My Administration is coordinating with State and Area Agencies on Aging, and faith-based and community organizations to better provide essential services, such as meals, nutrition, counseling, and health screening, to our seniors. Seven million older Americans and their families are currently being served by a large network of Federal, State, tribal, local partnerships, and thousands of volunteers. The services provided by these groups make it easier for older Americans to remain in their homes, communities, and the workplace, which helps preserve their dignity and independence.

In addition, our Medicare system is our binding commitment as a caring society. When Medicare was signed into law 38 years ago, it was designed to bring the healing miracle of modern medicine to our senior citizens. We must renew our commitment to giving seniors access to the preventative medicines and new drugs that are transforming health care in America. Medicare must be available in a variety of forms, and older Americans must have the opportunity to choose the healthcare plan that best fits their needs. My Administration will continue its efforts to improve programs that support older Americans and to offer innovative options for long-term care.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2003 as Older Americans Month. I commend our senior citizens for their many contributions to our society. I further commend the network of Federal, State, local, and tribal organizations, service and healthcare providers, caregivers, and millions of dedicated volunteers for their daily efforts on behalf of our senior citizens. I encourage all Americans to honor their elders, to find opportunities to address their needs, and to work together to reinforce the bonds that unite families and communities. I also call upon all our citizens to publicly reaffirm our Nation's commitment to older Americans this month, and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11189
Filed 5–2–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7670 of April 30, 2003

Law Day, U.S.A., 2003

By the President of the United States of America

A Proclamation

America was founded on the ideals of liberty and equality for all, and the Framers of the Constitution created three branches of the national Government to uphold these principles. The third branch, the Judicial, is responsible for administering justice fairly and impartially. On Law Day, we recognize the achievements of our Nation's legal system and our independent Judiciary in sustaining the rights and liberties we cherish.

George Washington wrote, ''The administration of justice is the firmest pillar of government.'' Our Judicial branch upholds the rule of law in our society and strengthens our democracy. Under the Constitution, judges are granted the solemn responsibility of providing fair and impartial resolution of criminal and civil disputes.

This year's Law Day theme, ''Independent Courts Protect Our Liberties,'' focuses on one of the foundations of our constitutional system: judicial independence, provided in the Federal system by life tenure and an assured level of compensation. In order to ensure equality for all citizens and fairness in the judicial process, our judges must serve as impartial arbiters who do not have a stake in their decisions or seek to achieve a biased outcome or particular result in the cases they oversee.

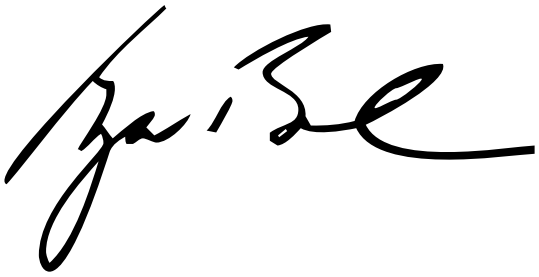
Our constitutional system of separation of powers places careful limits on the powers of judges and separates the responsibilities of making laws and interpreting laws between the Legislative and Judicial branches. Independent Federal judges have the autonomy to make decisions and interpret the law unfettered by outside influences. In this way, we are assured that our laws will be interpreted justly and applied with uniformity.

Our Nation's judges must be men and women of exemplary character, wisdom, experience, and good temperament, and have a willingness to work hard. They must be jurists who will honor the public office with which they are entrusted.

This Law Day, we recognize the vital role of independent judges in upholding justice in courts throughout our land, and we resolve to continue to support and strengthen the Judicial branch, thereby helping to preserve our rights and liberties.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2003, as Law Day, U.S.A. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11191
Filed 5–2–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7671 of April 30, 2003

Loyalty Day, 2003

By the President of the United States of America

A Proclamation

To be an American is not a matter of blood or birth. Our citizens are bound by ideals that represent the hope of all mankind: that all men are created equal, endowed with unalienable rights to life, liberty, and the pursuit of happiness. On Loyalty Day, we reaffirm our allegiance to our country and resolve to uphold the vision of our Forefathers.

Our founding principles have endured, guiding our Nation toward progress and prosperity and allowing the United States to be a leader among nations of the world. Throughout our history, honorable men and women have demonstrated their loyalty to America by making remarkable sacrifices to preserve and protect these values.

Today, America's men and women in uniform are protecting our Nation, defending the peace of the world, and advancing the cause of liberty. The world has seen again the fine character of our Nation through our military as they fought to protect the innocent and liberate the oppressed in Operation Iraqi Freedom. We are honored by the service of foreign nationals in our Armed Services whose willingness to risk their lives for a country they cannot yet call their own is proof of the loyalty this country inspires. Their service and sacrifice are a testament to their love for America, and our soldiers' honor on and off the battlefield reaffirms our Nation's most deeply held beliefs: that every life counts, and that all humans have an unalienable right to live as free people.

These values must be imparted to each new generation. Our children need to know that our Nation is a force for good in the world, extending hope and freedom to others. By learning about America's history, achievements, ideas, and heroes, our young citizens will come to understand even more why freedom is worth protecting.

Last September, I announced several initiatives that will help improve students' knowledge of American history, increase their civic involvement, and deepen their love for our great country. The We the People initiative will encourage the teaching of American history and civic education by providing grants for curriculum development and training seminars. The Our Documents initiative will use the Internet to bring information about and the text of 100 of America's most important documents from the National Archives to classrooms and communities across the country. These initiatives are important, for it is only when our children have an understanding of our past that they will be able to lead the future.

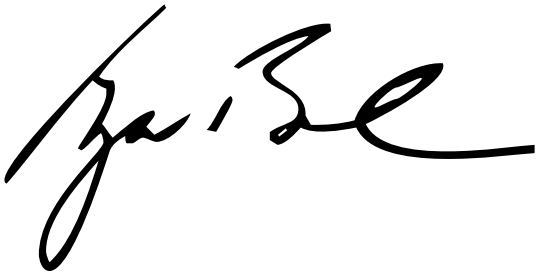
This Loyalty Day, as we express allegiance to our Nation and its founding ideals, we resolve to ensure that the blessings of liberty endure and extend for generations to come.

The Congress, by Public Law 85–529, as amended, has designated May 1 of each year as ''Loyalty Day,'' and I ask all Americans to join me in this day of celebration and in reaffirming our allegiance to our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 1, 2003, as Loyalty Day. I call upon

all the people of the United States to join in support of this national observance. I also call upon government officials to display the flag of the United States on all government buildings on Loyalty Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11192
Filed 5–2–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7672 of April 30, 2003

National Day of Prayer, 2003

By the President of the United States of America

A Proclamation

We are a Nation whose people turn to prayer in times of our most heartfelt sorrow and our moments of greatest joy. On this National Day of Prayer, first called for more than 225 years ago by the Continental Congress, we come together to thank God for our Nation's many blessings, to acknowledge our need for His wisdom and grace, and to ask Him to continue to watch over our country in the days ahead.

America welcomes individuals of all backgrounds and religions, and our citizens hold diverse beliefs. In prayer, we share the universal desire to speak and listen to our Maker and to seek the plans He has for our lives. We recognize the ways that He has blessed our land abundantly, and we offer thanks for these gifts and for the generosity of our Nation in helping those in need. We are grateful for our freedom, for God's love, mercy, and forgiveness, and for a hope that will never be shaken.

Today, our Nation is strong and prosperous. Our Armed Forces have achieved great success on the battlefield, but challenges still lie ahead. Prayer will not make our path easy, yet prayer can give us strength and hope for the journey.

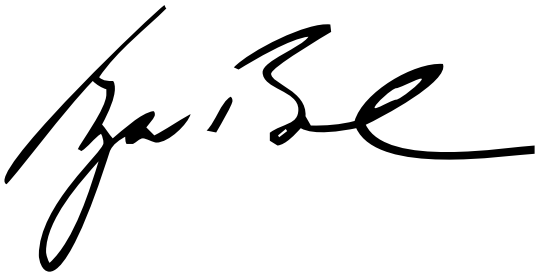
As we continue to fight against terror, we ask the Almighty to protect all those who battle for freedom throughout the world and our brave men and women in uniform, and we ask Him to shield innocents from harm. We recognize the sacrifice of our military families and ask God to grant them peace and strength. We will not forget the men and women who have fallen in service to America and to the cause of freedom. We pray that their loved ones will receive God's comfort and grace.

In this hour of history's calling, Americans are bowing humbly in churches, synagogues, temples, mosques, and in their own homes, in the presence of the Almighty. This day, I ask our Nation to join me in praying for the strength to meet the challenges before us, for the wisdom to know and do what is right, for continued determination to work towards making our society a more compassionate and decent place, and for peace in the affairs of men.

The Congress, by Public Law 100–307, as amended, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a ''National Day of Prayer.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 1, 2003, as a National Day of Prayer. I ask the citizens of our Nation to pray, each after his or her own faith, in thanksgiving for the freedoms and blessings we have received and for God's continued guidance and protection. I also urge all Americans to join in observing this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11193
Filed 5–2–03; 8:45 am]
Billing code 3195–01–P

Federal Register

Monday,
May 5, 2003

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials: Enhancing Hazardous Materials Transportation Security; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 176, and 177

[Docket No. RSPA–03–14982 (HM–232C)]

RIN 2137–AD79

Hazardous Materials: Enhancing Hazardous Materials Transportation Security

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

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule incorporates into the Hazardous Materials Regulations a requirement that shippers and transporters of certain hazardous materials comply with Federal security regulations that apply to motor carrier and vessel transportation. In addition, this interim final rule revises the procedures for applying for an exemption from the Hazardous Materials Regulations to require applicants to certify compliance with applicable Federal transportation security laws and regulations. This interim final rule will assure that shippers and transporters are aware of and comply with their security obligations.

DATES: *Effective Date.* This interim final rule is effective May 5, 2003.

Compliance Date: June 4, 2003.

Comments. Submit comments by June 4, 2003. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC. 20590–0001. Comments should identify Docket Number RSPA–03–14982 (HM–232C) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at *http://dms.dot.gov/* and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at *http://dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
II. Security Guidance
III. Security Rulemaking
IV. USA PATRIOT Act
V. Safe Explosives Act
VI. Vessel and Port Security
VII. Transportation by Air
VIII. DOT Determination under 18 U.S.C. 845(a)(1)
IX. Comments on this Interim Final Rule
X. Regulatory Analyses and Notices

I. Background

Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes. Millions of tons of explosive, toxic, corrosive, flammable, and radioactive materials are transported every day. Hazardous materials move by plane, train, truck, or vessel in quantities ranging from several ounces to many thousands of gallons. The vast majority of hazardous materials shipments arrive safely at their destinations. Most incidents that do occur involve small releases of material and present no serious threat to life or property.

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Under the Department of Transportation's Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I, to a low hazard, Packing Group III, material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, which are based on the internationally recognized United Nations system for classification, identification, and ranking of hazardous materials, all hazardous materials are divided into nine general classes according to their physical, chemical, and nuclear properties as follows:

Class 1—Explosives
Class 2—Compressed, flammable, nonflammable, and poison gases
Class 3—Flammable liquids
Class 4—Flammable solids
Class 5—Oxidizers and organic peroxides
Class 6—Toxic and infectious materials
Class 7—Radioactive materials
Class 8—Corrosive materials
Class 9—Miscellaneous dangerous substances and articles

Within Classes 1, 2, 4, 5, and 6, there are more specifically defined divisions, and within Class 1 there are Compatibility Group subdivisions, as well. The hazard classes and divisions are not mutually exclusive. Certain hazardous materials have multiple dangerous properties, each of which must be addressed according to its relative potential to do harm. In these cases, the UN system and the HMR allow identification and communication of both the primary and subsidiary threats.

DOT's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The HMR are designed to achieve two goals: (1) To ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, and (2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using

placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation.

II. Security Guidance

In the wake of the terrorist attacks of September 11, 2001, and subsequent threats related to biological and other hazardous materials, DOT undertook a broad review of government and industry hazardous materials transportation safety and security programs. As part of this review, we established the Hazardous Materials Direct Action Group (Hazmat DAG). The Hazmat DAG met with representatives of the hazardous materials industry, emergency response community, and state governments to discuss transportation security issues and continuing terrorist threats. In addition, we created a DOT Intermodal Hazardous Materials Transportation Security Task Force, which considered attack or sabotage vulnerabilities, existing security measures, and potential ways to reduce vulnerabilities. The Task Force included representatives from the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA), U.S. Coast Guard (USCG), and Office of the Secretary.

Based in part on discussions in the Hazmat DAG and on the results of the Task Force review, on February 14, 2002, we published an advisory notice to inform shippers and carriers of voluntary measures that can enhance the security of hazardous materials shipments during transportation (67 FR 6963). The notice addresses personnel, facility, and en route security issues and includes contact points for obtaining additional, more detailed information. Among other recommendations, the security advisory notice advised employers to be aware of the possibility that someone they employ may pose a potential security risk. We recommended that employers consider establishing a process to verify the information provided by applicants on application forms or resumes, including checking with former and current employers and personal references provided by job applicants.

In addition, FMCSA conducted a number of on-site security reviews with hazardous materials shippers and carriers. The reviews were targeted to high-risk hazardous materials, including explosives, radioactive materials, materials that are poisonous by inhalation, and flammable gases and liquids. The on-site security reviews included reviews by the FMCSA investigator and company officials of carrier records in order to identify suspicious activities by company employees that could affect transportation security. The security reviews resulted in 280 findings of suspicious activities by employees, with 126 referrals to the Federal Bureau of Investigation (FBI). Examples of suspicious activity that provided the basis for the FBI referrals include false personnel information, citizenship irregularities, FBI watch list, and previous employment irregularities.

The review included recommendations for addressing identified security risks, including risks associated with current or new employees. The FMCSA recommendations for mitigating such risks include measures such as: (1) Implementing methods for security identification (*i.e.*, ID badges) and systems to verify employee identification; (2) reviewing employee and applicant personnel information with a particular focus on gaps in employment, frequent job shifts, all names used by the applicant, type of military discharge, citizenship, present and prior residence information, personal references, and criminal history; and (3) verifying compliance with the Immigration Reform and Control Act of 1986 to assure that I–9 forms are properly completed and maintained for all employees. A number of hazardous materials shippers and carriers have voluntarily implemented security programs that include measures to identify and address employee security issues.

III. Security Rulemaking

On March 25, 2003, the Research and Special Programs Administration (RSPA) published a final rule under Docket HM–232 (68 FR 14510). The final rule requires persons who offer certain hazardous materials for transportation in commerce and persons who transport certain hazardous materials in commerce to develop and implement security plans.

In developing the HM–232 final rule, we assessed the security risks associated with the transportation of different classes and quantities of hazardous materials. We concluded that the most significant security risks involve the transportation of certain radioactive materials, certain explosives, materials that are poisonous by inhalation, certain infectious and toxic substances, and bulk shipments of materials such as flammable and compressed gases, flammable liquids, flammable solids, and corrosives. Based on this security risk assessment, the HM–232 final rule requires persons who offer for transportation or transport the following hazardous materials to develop and implement security plans: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR part 73; and (6) a shipment that requires placarding. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. In effect, then, the HM–232 final rule applies the security plan requirement to a shipper or carrier of a hazardous material in an amount that requires placarding and to select agents. Using the placarding thresholds to trigger enhanced security requirements covers the materials that present the most significant security threats in transportation and provides a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. It also provides consistency for the regulated community, thereby minimizing confusion and facilitating compliance.

The HM–232 final rule also includes new security awareness training requirements for all hazardous materials employees. This training must include an awareness of the security risks associated with hazardous materials transportation, measures designed to enhance transportation security, and a component covering how to recognize and respond to possible security threats.

IV. USA PATRIOT Act

DOT is working with the Department of Homeland Security's Transportation Security Administration (TSA) to administer provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act; Public Law 107–56, October 25, 2001, 115 Stat. 272). Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by

adding a new section 5103a titled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides that a state may not issue a license to operate a motor vehicle transporting a hazardous material in commerce unless the Secretary of Transportation has first determined that the individual does not pose a security risk warranting denial of the license. Section 5103a(a)(2) subjects license renewals to the same requirements.

There is no ''hazmat license'' *per se* under state or Federal law. However, section 1012(b) of the USA PATRIOT Act also amended 49 U.S.C. 31305(a)(5), which prescribes fitness and testing standards for individuals operating a commercial motor vehicle carrying a hazardous material, by adding a new paragraph (C) to require a state to ensure that an individual has been vetted under 49 U.S.C. 5103a before the state issues a commercial driver's license (CDL). Thus, DOT And TSA interpret the ''hazmat license'' referred to in section 1012 as the hazardous materials endorsement to a CDL, which is required by 49 CFR 383.93(b)(4). To qualify for the hazardous materials endorsement, an individual must first pass a specialized knowledge test (§ 383.121) in addition to the requisite general knowledge and skills tests required for a CDL. Therefore, DOT and TSA consider section 5103a a *de facto* amendment to the CDL legislation.

Section 5103a(c) requires the Attorney General, upon the request of a state regarding issuance of a hazardous materials endorsement, to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary of Transportation of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) A check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

TSA and DOT's Federal Motor Carrier Safety Administration (FMCSA) have developed regulations to implement the hazardous materials licensing provisions of the USA PATRIOT Act. TSA's regulation, published in today's edition of the **Federal Register**, addresses the procedures for making determinations as to whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a commercial driver's license and for appealing and issuing waivers to such a determination. Also in today's edition of the **Federal Register**, FMCSA is publishing a companion regulation amending Part 383 of the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit states from issuing, renewing, transferring, or upgrading a commercial driver's license with a hazardous materials endorsement unless the Attorney General has first conducted a background records check of the applicant, and TSA has determined that the applicant does not pose a security threat warranting denial of the hazardous materials endorsement.

Part 383 of the FMCSRs requires a driver to have a hazardous materials endorsement to the CDL only if the driver operates a commercial motor vehicle transporting hazardous materials in amounts required to be placarded under the HMR. FMCSA is amending Part 383 to require an operator of a commercial motor vehicle that transports materials on the CDC select agent list to have a hazardous materials endorsement to his or her CDL. Thus, TSA and FMCSA implementation of the USA PATRIOT Act is consistent with RSPA's assessment in HM–232 that the hazardous materials placarding thresholds, plus the CDC select agent list, cover materials that present the most significant security threats in transportation.

To assure consistency between the HMR and the FMCSR concerning the USA PATRIOT Act requirements for commercial motor vehicle drivers, in this final rule, we are amending Part 177 of the HMR to require compliance with Part 383 of the FMCSR.

TSA, with the assistance of DOT's Federal Railroad Administration, intends to issue a rule somewhat similar to the USA PATRIOT Act rule for railroad workers who are in security-sensitive positions. Upon issuance of such a rule, RSPA will issue an additional rule making any such railroad background check requirements part of the HMR.

V. Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002. Sections 1121–1123 of SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully ''ship or transport any explosive in or affecting interstate or foreign commerce'' or ''receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.'' Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: Aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Persons who violate 18 U.S.C. 842(i) are subject to criminal penalties.

18 U.S.C. 845(a)(1) provides an exception to 18 U.S.C 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air, which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety.'' The Department of Justice has interpreted this provision to exempt persons from application of § 842(i) when (1) DOT has actually regulated a relevant aspect of the transportation of explosives, and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of § 845(a)(1), if DOT determines that persons engaged in certain aspects of the transportation of explosives do not pose a security risk and do not warrant regulation, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.

The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so. Class 1 materials are divided into six divisions. Assignment of an explosive to a division depends on the degree and nature of the explosive hazard presented. Thus, a Division 1.1 explosive is one that presents a mass explosive hazard. A mass explosion is one that affects almost the entire load simultaneously. A Division 1.2 explosive has a projection hazard, which means that if the material explodes, it will project fragments outward at some distance. A Division 1.3 explosive presents a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard. A Division 1.4 explosive has a minor explosion hazard

that is largely confined to the package and does not involve projection of fragments. A Division 1.5 explosive is a very insensitive explosive that has a mass explosion potential, but is so insensitive that it is unlikely to detonate under normal conditions of transport. A Division 1.6 explosive is an extremely insensitive article that does not have a mass explosion hazard and demonstrates a negligible probability of accidental initiation or propagation. Specific materials that are covered by the definition of Class 1 materials include such items as blasting agents, propellants, detonators, various types of ammunition, explosives charges and projectiles, ammonium nitrate-fuel oil mixtures, rockets, fireworks, and warheads.

For explosives transportation, the HMR prohibit transportation of an explosive unless it has been tested, classed, and approved by the Associate Administrator for Hazardous Materials Safety, RSPA. The approval granted by the Associate Administrator specifies packaging and other transportation provisions that must be followed by the person who offers or transports the explosive material. In addition to packaging requirements, the HMR require explosives to be labeled and/or placarded to indicate the explosive hazard. Explosives shipments generally must be accompanied by shipping papers and emergency response information.

The HMR definition for a Class 1 material is test- and performance-based and, thus, accommodates newly developed materials and modifications to existing materials. Moreover, the HMR definition for a Class 1 material is consistent with definitions used and accepted internationally (*i.e.*, the UN Recommendations for the Transport of Dangerous Goods, the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Organization International Maritime Dangerous Goods Code), not only for transportation, but for many other applications, as well.

For the most part, the HMR definition of an explosive is consistent with the relevant definition established by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). By statute, ATF regulates materials that are explosives, blasting agents, and detonators. An ''explosive'' is ''any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters;'' a ''blasting agent'' is, in part, ''any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive;'' and a ''detonator'' is ''any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.'' ATF supplements these statutory definitions with a list of specific materials, updated periodically, that are regulated as explosives. 18 U.S.C. 841(c)—(f). Certain statutory exemptions may apply. For example, certain types and quantities of black powder may be exempt from ATF regulation. 18 U.S.C. 845(a)(5).

Because the various definitions used by DOT and ATF are not identical, some materials are treated differently by the two agencies. For example, ATF lists several specific materials that it regulates as explosives that DOT regulates as non-explosive hazardous materials. Further, ATF regulates all mixtures that contain any of the materials it lists as explosives. ATF does not define a lower limit at which a mixture would cease to meet the definition for an explosive. The DOT definition, by contrast, depends on test results to determine whether a material should be classed as an explosive. Thus, if a mixture is tested and does not exhibit explosive properties, it would not be classed as an explosive under the HMR, even though the mixture might contain a material that, by itself, would be classed as an explosive.

Moreover, the ATF explosives list includes dinitrophenol, guncotton, nitrostarch, sodium picramate, and several other materials that DOT regulates as non-explosive hazardous materials when combined with water. When combined with water, these materials may not exhibit explosive properties and, thus, do not meet the DOT definition for an explosive. DOT regulates these materials, with specified percentages of water, as Division 4.1 (flammable solid) materials.

ATF regulates ammonium nitrate-fuel oil mixtures and ammonium nitrate explosive mixtures as explosive materials. Under the HMR, certain ammonium nitrate products are classed as Division 1.1 explosives, and ammonium nitrate-fuel oil mixtures are classed as Division 1.5 explosives. However, some mixtures that include ammonium nitrate among their components are classed as Division 5.1 (oxidizer) materials because they require further processing before they can be used to produce a practical explosion. Again, the difference results because the DOT classification criteria depend on testing to determine whether a material exhibits explosive properties; if a material is tested and found not to meet the DOT definition, it is not regulated as an explosive for purposes of the HMR.

A major difference between the ATF and DOT requirements for regulating explosives is how the agencies treat military and government shipments. In accordance with 18 U.S.C. 845, ATF generally does not regulate explosives being delivered to any agency of the United States or any state or political subdivision thereof; or explosives manufactured under the regulation of the military department of the United States or transported on behalf of the military department of the United States or transported to arsenals, navy yards, depots, or other establishments owned by, or operated on behalf of, the United States. Under the HMR, by contrast, government and military shipments of explosives are regulated if such shipments are transported by commercial carriers rather than government or military personnel.

For purposes of SEA, DOT compared the list of materials that ATF regulates as explosives with the definitions for different classes of hazardous materials regulated under the HMR and assessed the security risks associated with the transportation of such materials. We concluded that a mixture that does not meet the definition of a Class 1 material under the HMR generally does not pose a sufficient security risk when transported in commerce to warrant detailed employee background checks. Such mixtures may meet the definition of a different hazard class, in which case they are subject to applicable security requirements in HM–232 or in TSA, FMCSA, or USCG regulations, as incorporated into the HMR in this final rule, or they may not meet the definition of any hazard class, in which case they are not regulated as hazardous materials under the HMR.

We further concluded that a material regulated as an explosive by ATF but as a different class of hazardous material under the HMR, such as certain wetted materials and ammonium nitrate mixtures, generally will be subject to applicable security requirements in HM–232 or in TSA, FMCSA, or USCG regulations, as incorporated into the HMR in this final rule. If required to be placarded, shipments of such materials will be subject to the background check requirements mandated in the USA PATRIOT Act when transported by

motor carrier and to the security plan requirements in Subpart I of the HMR. When shipped in amounts that do not require placarding, such shipments do not pose a security risk when transported in commerce sufficient to warrant detailed employee background check requirements at this time.

Generally, we have determined that the placarding thresholds established in the HMR for explosives shipments represent explosives that pose the most significant security risk when transported in commerce. Explosives in the following quantities must be placarded in accordance with HMR requirements:

(1) Any quantity of Division 1.1, 1.2, or 1.3 explosives;

(2) More than 454 kg of Division 1.4, 1.5, or 1.6 explosives.

Examples of Division 1.4 explosives include toy caps, signal devices, flares, and distress signals. In quantities less than 454 kg, such explosives generally do not present a significant security threat involving their use during transportation for a criminal or terrorist act. Similarly, Division 1.5 and 1.6 explosives are sufficiently insensitive that, in amounts below 454 kg, they generally do not present a significant security threat.

To address implementation of SEA for Canadian transporters of explosives into the United States, TSA issued an interim final rule on February 6, 2003 (68 FR 6083), which took effect immediately. The regulation establishes temporary requirements for all Canadian motor carriers and rail carriers using certain aliens to transport explosives into the United States. In essence, the final rule prohibits a Canadian commercial transporter of explosives from entering the United States unless he or she is identified with a ''known'' status. A transporter is considered ''known'' by submitting specified information to Transport Canada, an agency within the Canadian government that oversees transportation safety and security. Transport Canada conducts checks to ensure that the transporter is a legitimate entity authorized to do business in Canada, and that there are no security concerns with the transporter. Transport Canada forwards this information to TSA, which may conduct additional security checks prior to forwarding the list of acceptable transporters to the U.S. Customs Service. The U.S. Customs service enforces the interim final rule by conducting checks at the U.S.-Canada border.

The HMR set forth provisions for the transportation by rail or highway of shipments of hazardous materials coming into the United States from Canada. Generally, in § 171.12a, the HMR permit shipments that originate in Canada and either terminate in the United States or transit the United States to a foreign destination to conform to requirements in the Canadian Transportation of Dangerous Goods Regulations, with some exceptions and limitations.

For consistency with the TSA requirements applicable to Canadian carriers of explosives, in this final rule, we are amending § 171.12a to require Canadian motor carriers and railroads that transport explosives into the United States to comply with the TSA regulations at 49 CFR 1572.9 and 1572.11 concerning the transportation of explosives from Canada to the United States.

VI. Vessel and Port Security

The USCG is responsible for assuring maritime security. Primary statutory authority is set forth in Title 14, U.S. Code, the Ports and Waterways Safety Act, 33 U.S.C. 1221, *et seq.*, and the Espionage Act of 1917, as amended by the Magnuson Act of 1950, and most recently by the Maritime Transportation and Security Act of 2002, in addition to Executive Orders and Coast Guard regulations implementing the statutory authorities. Since the September 11, 2001, terrorist attacks on the United States, the Coast Guard has quickly adapted to the changed environment to protect our nation's ports and waterways.

Vessels. With respect to the treatment of aliens and felons, the USCG regulations (33 CFR 160 Subchapter C, as amended by 68 FR 9537 (February 28, 2003); 33 CFR part 6; and 33 CFR 160.111(a)) require commercial vessels to provide information on crew and passenger identity and certain dangerous cargo, including explosives, to the U.S. Coast Guard National Vessel Movement Center. The notification must take place at least 96 hours prior to arrival in port so that the Coast Guard can identify any potential security and safety risk. This includes an examination of the conditions under which aliens may lawfully transport, ship, receive, and possess explosives via commercial vessel into a U.S. seaport from any overseas location and between domestic ports. The information provided is checked with law enforcement and intelligence databases. The Coast Guard then makes a determination as to whether the vessel or any of the persons on board present a security or safety threat to the United States. Based on this threat assessment, the Coast Guard may decide to subject a vessel to additional scrutiny, which may include boarding offshore and verification that neither the vessel nor the persons on board present a safety or security risk before they are allowed to enter U.S. territorial seas and ports.

The regulations in 33 CFR Part 6 provide the authority for the Coast Guard to board vessels and direct their movements for the purpose of security. In addition, the Coast Guard's authority to restrict and/or order movement of vessels is found in 33 CFR 160.111(a).

The Coast Guard has promulgated extensive regulations (46 CFR parts 10 and 12) to address which aliens, felons, ex-felons, non-citizens, persons who have been dishonorably discharged from the military, fugitives, persons who have been adjudged insane or otherwise determined by competent authority to be physically or mentally incompetent, drug users and ex-drug users may serve as licensed and unlicensed mariners on U.S. vessels. The licensing and documentation regime covers mariners that may handle explosives and other hazardous materials. Without such a license or document, an individual may not serve in a capacity requiring a license or document on any vessel of the United States. The regulations in 46 CFR part 10 apply to persons applying for a license as a deck or engineer officer or licensed operator of a vessel of the United States.

The Coast Guard carefully considers whether a felon or an ex-felon is sufficiently rehabilitated and whether a drug user or an ex-drug user is free from the use of dangerous drugs in order to determine if he or she should be entrusted with the responsibilities of service in the capacity for which he or she is seeking a license. With respect to felons, the review includes persons who are under indictment for felonies, as well as persons who have been convicted. The regulations at 46 CFR 10.201 contain a table of criminal offenses that are considered disqualifying depending on the crime and amount of time between application for the license and the conviction. The table of criminal offenses includes not only specific offenses, but also general categories of other crimes against property and public safety, for which an applicant may be denied a license depending on the circumstances. These general categories include, for example, arson and unlawful possession or use of a firearm or explosives. In addition, the regulations at 46 CFR 10.201 establish procedures an applicant must follow to prove citizenship. A person who has renounced his citizenship does not qualify for a Coast Guard license. Moreover, an application may be denied

to persons with ''habits of life and character'' that would make the applicant's presence on board a vessel hazardous to marine safety or national security. This would include persons who are fugitives, or have been dishonorably discharged from the military. An applicant for a license must also pass a physical exam, which discloses whether he is physically and mentally competent to serve in the capacity for which he is applying. In addition, relevant data bases are checked; such data base checks will disclose information related to whether an applicant has ever been adjudged insane or otherwise determined by competent authority to be incapable of handling his affairs. If so, the applicant must present evidence of cure in order to be granted a license, and a determination is made based on the record in each such case.

The requirements of 46 CFR 12.02–4, issued under authority of Chapter 73 of Title 46 of the United States Code, provide a similar regime for unlicensed seamen who are required to have a merchant mariners document in order to serve on the crew of a U.S. vessel. The regulations require an extensive application and review process that includes a check of criminal records and the National Driver Register. This ensures that only persons who have been vetted, from a safety and security standpoint, hold licenses or other appropriate documents to sail as officers or unlicensed seamen on U.S. vessels. Although the Coast Guard does not have a strict ''no-felon'' rule for either licensed or unlicensed mariners, the regulations provide for a regime to evaluate each individual case and determine whether the individual presents a security threat. Further, Coast Guard regulations at 46 CFR 12.02–10, implementing 46 U.S.C. 8103(b)(1) concerning citizenship requirements for unlicensed seamen, state that ''No applicant * * * shall be accepted unless the alien presents acceptable documentary evidence from the U.S. Immigration and Naturalization Service that he is lawfully admitted to the United States for permanent residence.'' Moreover, an application may be denied to persons with ''habits of life and character'' that would make the applicant's presence on board a vessel hazardous to marine safety or national security. This would include fugitives and persons who have been dishonorably discharged from the military. In addition, a check of the relevant data bases is made; such data base checks will disclose information related to whether an applicant has ever been adjudged insane or otherwise determined by competent authority to be incapable of handling his affairs. If so, the applicant must present evidence of cure in order to be granted a license, and a determination is made based on the record in each such case. The Coast Guard is currently engaged in amending its licensing and documentation processes in light of the terrorist attacks of September 11, 2001.

Ports. The USCG port security card regulations (33 CFR part 125), codified pursuant to the Espionage Act of 1917, as amended by the Magnuson Act of 1950, 50 U.S.C. 191 *et seq.*, govern who may gain access to a waterfront facility. The USCG has promulgated explosives handling regulations (33 CFR part 126) that allow loading or discharge and handling of explosives at designated waterfront facilities. These regulations restrict these activities to entities that have obtained a permit issued by the Coast Guard. Read together, these regulations provide a comprehensive regulatory regime for the safe and secure transportation, storage, possession, and handling of explosives at the facility. The regulations also provide for the security of the facility and the vessels at the facility from threats presented by terrorists and other prohibited categories of individuals, including felons and drug users, listed in 33 CFR 125.19. On August 7, 2002, the Coast Guard published a notice in the **Federal Register** (67 FR 51082) to: (1) Call attention to these regulations; (2) clarify the identification credentials that are acceptable to the Commandant in order to gain access to waterfront facilities, port, and harbor areas; (3) advise that Coast Guard Captains of the Port are responsible for ensuring that those allowed access to waterfront facilities do not present unacceptable security threats; and (4) note that individuals without proper identification may not gain access to waterfront facilities and vessels if conditions so warrant. These regulations allow the Coast Guard to screen who may safely and securely handle explosives and other hazardous materials on board vessels and at waterfront facilities, including longshoremen, and the truck drivers that drive the container chassis from shipside to and around the container marshalling yard.

The Coast Guard is engaged in on-going discussions with TSA to implement a regime, based in part on these regulations and in part on the regulations set forth in 33 CFR part 6, to ensure that any person granted access to waterfront facilities, including those designated waterfront facilities that handle explosives, does not present a security or safety threat. These discussions include TSA implementation of appropriate background screening checks designed to disclose those factors that would lead the Coast Guard to deny access to part or all of a given facility based on security risk and threat assessment. Finally, if the law enforcement and intelligence data bases to which the Coast Guard has access reveal information about an individual that makes that person an unacceptable risk or a threat to a facility, including any information relating to the individual's criminal background or drug use, 33 CFR 6.04–5 authorizes the Captain of the Port to deny access to that person and to prevent that person from taking any article or thing onto the vessel or waterfront facility.

The Coast Guard's comprehensive regulatory regime in 33 CFR 160 subchapter C, as amended by 68 FR 9537 (February 28, 2003), for vessels arriving in the United States; 46 CFR parts 10 and 12, for the licensing and documentation of seamen on commercial U.S. vessels; and 33 CFR parts 125 and 126, regarding access and control of handling of explosives and other hazardous materials on waterfront facilities, adequately addresses the security risks that may be associated with the transportation of hazardous materials, including explosives, by vessel. To assure consistency with these requirements, in this final rule, we are amending part 176 of the HMR, which addresses the transportation of hazardous materials by vessel, to require compliance with requirements in 46 CFR parts 10 and 12. The HMR already require compliance with 33 CFR parts 125, 126, and 160.

VII. Transportation by Air

In response to the September 11, 2001, terrorist attacks, Congress enacted the Aviation and Transportation Security Act (ATSA; Pub. L. 107–71; November 19, 2001; 115 Stat. 597), which established TSA and transferred authority for aviation security from FAA to TSA. FAA continues to have authority to regulate all areas of aviation safety and to enforce the HMR as they apply to air shipments of hazardous materials. Thus, TSA, RSPA, and FAA share responsibility for addressing security issues associated with the transportation of hazardous materials by air.

In summary, only a small number of operators transport explosives in amounts that would require placarding if transported by highway or rail. These air carriers operate pursuant to a security program approved by TSA and

an exemptions program administered by RSPA.

TSA, FAA, and RSPA regulations govern the safety and security of hazardous materials, including explosives, transported by aircraft. Following creation of TSA, DOT transferred to TSA a series of security regulations that had been issued and enforced by FAA prior to September 11, 2001. In addition, these security regulations were amended to address new statutory requirements in ATSA. See 49 CFR parts 1500, 1520, 1540, 1542, 1544, and 1546. Following this transfer of authority, TSA promulgated a number of additional security regulations concerning background checks on individuals in the aviation industry and procedures to enhance the security of airports and air carrier operations.

TSA requires all operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to adhere to a security program that includes a fingerprint-based criminal history record checks (CHRC) for all flight crewmembers. Any person who has been convicted of certain felonies and serious misdemeanors within the last 10 years is not permitted to operate the aircraft. These disqualifying offenses are consistent with those that would disqualify a person from holding a hazardous materials endorsement to a CDL under the USA PATRIOT Act implementing regulations.

In addition, the aircraft operator must develop procedures to restrict access to the cockpit during flights and to secure the aircraft from unauthorized entry while on the ground. As well, the operator must develop procedures to handle bomb and air piracy threats and must train security coordinators to oversee all ground activities.

In addition, certain air cargo entities operate under a Domestic Security Integrated Program (DSIP), which provides that all individuals with unescorted access to secured areas undergo a CHRC. Any individual with a conviction in the preceding 10 years for a disqualifying offense listed in 49 CFR 1544.229 is not permitted access to secured areas. Under the DSIP, the cargo carrier must complete a background check of the previous five years for any individual with access to controlled areas of the airport that have not been deemed security identification display areas. Further, the cargo operator must develop procedures that provide for personnel identification display areas and to address bomb or highjack threat information. The cargo carriers operating under a DSIP must provide security training to all employees and are subject to Security Directives issued by TSA.

TSA also requires CHRCs for passenger and baggage screeners; employees and contractors with access to secured areas, including baggage and cargo handlers; and supervisors. *See* 49 CFR 1542.209 and 1544.229–230. In addition, the airport must provide an escort for individuals in secured areas who have not completed a CHRC.

Aviation workers in safety sensitive service are subject to alcohol and drug regulations issued and enforced by FAA. *See* Appendices I and J to 14 CFR part 121. These regulations require random, probable cause, and post-accident drug and alcohol testing to ensure that employees in safety-sensitive service are not drug users or working under the influence of alcohol. Also, FAA's regulations require medical examinations periodically for all flight crewmembers to ensure that there are no physical or emotional limitations that may cause safety or security threats to aviation operations. *See* 14 CFR part 67.

There are also a variety of security measures in place affecting the transportation of explosives into the United States by aliens on aircraft. With respect to commercial passenger flights to the United States, TSA regulates foreign commercial passenger carriers under 49 CFR part 1546. Among other requirements, part 1546 requires foreign air carriers to adopt and implement a security program approved by TSA. Foreign air carriers must compare the names of all direct air carrier employees against various watch lists. In certain cases, the carrier is not permitted to allow the employee to have unescorted access to secured areas of the airport. The carrier must immediately notify the nearest field office of the FBI if an employee is an individual known to pose a security threat.

Certain foreign air carriers from countries of particular concern also operate under special security program procedures, which require the carrier to provide TSA advance notice of the identities of cockpit crewmembers. This includes pilots, copilots, flight engineers, and airline management personnel, as well as any relief or deadheading cockpit crew. The carrier must provide a variety of identifying information for each individual. If an individual is known to pose a security threat, the carrier is not permitted to allow the individual to operate on a flight into or out of the United States.

Also, under special security program procedures, foreign air carriers are required to examine the identification of all operational crewmembers and verify their assignment on each flight departing to the United States. If the foreign air carrier cannot verify the identity and flight assignment of a crewmember, the carrier must deny boarding and notify appropriate authorities.

FAA and TSA also regulate flights to the United States by various other commercial and private aircraft operators pursuant to a complex set of requirements set forth in a Notice to Airmen (NOTAM). Under this NOTAM, the operators must submit identifying information on flight crewmembers and passengers in advance of arrival in the United States, so that TSA can conduct background checks. In addition, TSA has the authority to issue Security Directives (SDs) to air carriers and airport operators, which have the force and effect of a regulation and may require certain actions or procedures immediately. For example, TSA has issued SDs to require background checks on individuals with unescorted access to certain secured areas of airports, special screening procedures to address individuals who may present a security threat at an airport, and a variety of new operational procedures that are triggered when the national security alert system level increases.

In addition to these regulations, NOTAMs, and SDs, TSA requires air carriers and airport operators to comply with a detailed Security Program designed to address the security risks associated with the type of operation. *See* 49 CFR 1542.103, and 1544.101. There are standard Security Programs for air carriers in scheduled passenger service, public charters, private charters, cargo operations, and small aircraft in commercial service. The Programs are tailored to the security concerns attendant to each type of operation based on the size of aircraft, the number and nature of the passengers, the degree to which aircraft enplane or deplane into secured areas of an airport, and a variety of other factors. Commercial airports that TSA has determined require formal Security Programs are also required to adopt a TSA-approved Security Program that must address background checks and identification for individuals with access to secured areas of the airport and aircraft, access control procedures, measures to control movement within secured areas, and escort procedures for vendors who are not subject to background checks.

Finally, TSA plans to issue strengthened cargo security program requirements for passenger carriers, Indirect Air Carriers (freight forwarders) and all-cargo air carriers by October 2003 that will address additional measures to ensure the security of cargo

operations. Requirements under consideration include expansion of background checks for those with access to air operations areas, and additional screening for those persons with access to the flight deck of all-cargo carriers.

The HMR establish requirements for the transportation of explosives on-board aircraft. Air carriers generally are prohibited from transporting explosives in amounts that would require placarding if transported by highway or rail. The HMR prohibit Division 1.1 and 1.2 explosives in any quantity from being transported by aircraft. A limited number of explosives classed as Division 1.3 are permitted for transportation by cargo aircraft in limited amounts. These include certain types of cartridges, flares, and distress signals. Additionally, a limited number of Division 1.4 explosives are permitted for transportation by passenger or cargo aircraft in limited amounts. Again, these include certain types of cartridges, detonators, fireworks, flares, fuses, and signal devices.

Under RSPA's exemptions program, a hazardous materials shipper or carrier may be granted an exemption from certain HMR requirements. An exemption authorizes a company or individual to transport a hazardous material in a manner that differs from the HMR, so long as an equivalent level of safety and security is maintained. Exemptions allow an operator quickly to implement new technologies and to evaluate new operational techniques that often enhance safety and increase productivity. In addition, exemptions permit timely movement of materials in an emergency or under adverse transportation conditions.

We have issued a limited number of exemptions that permit the transportation of certain explosives by air that would otherwise be prohibited for such transportation, including Division 1.1 and 1.2 explosives. There are currently 23 exemptions that authorize the transportation of explosives that are otherwise prohibited for transportation by air. All but one of these exemptions has been issued to an operator that is subject to TSA security requirements applicable to aircraft with a maximum certificated takeoff weight of 12,500 pounds of more. As discussed above, the TSA security requirements include provisions for CHRCs for all flight crewmembers, restricted access to the cockpit during flight, and ground security measures. We anticipate that the vast majority of exemptions applicants seeking to transport explosives by air that would otherwise be prohibited for such transportation will be air carriers that are subject to the TSA security requirements, including requirements for CHRCs for flight crews.

Persons applying for and renewing exemptions that permit the transportation of explosives that are otherwise prohibited for air transportation will need to demonstrate that the exemption proposal maintains an equivalent level of safety, including security, as is required by transportation regulations. To this end, in this interim final rule, we are amending the procedural regulations for applying for an exemption in 49 CFR Part 107 to require applicants to certify compliance with transportation security laws and regulations. With respect to explosive materials that are otherwise forbidden for transportation by air, this will include a certification to RSPA that the carrier complies with all applicable TSA security requirements and that none of the ''prohibited persons'' listed in 18 U.S.C. 842(i), as amended by SEA, will participate in the transportation. Each exemption will require, as a condition of the exemption, that the holder be in conformance with applicable transportation security requirements, including the prohibitions in 18 U.S.C. 842(i), before loading and departure. Consequently, DOT and TSA security requirements apply to these exemption holders and the exemption holders are not subject to criminal enforcement under 18 U.S.C. 842(i) when transporting explosives in commerce. Explosives permitted for transportation by passenger or cargo-only aircraft under the HMR without an exemption are not subject to the security certification requirements.

RSPA has determined that the types and quantities of explosives permitted for transportation without an exemption by passenger or cargo-only aircraft under the HMR do not present a security risk sufficient to warrant application of the TSA background check requirements at this time to persons who transport those shipments in commerce or to persons who possess those shipments incidental to transportation in commerce, including persons subject to 18 U.S.C. 842(i). Moreover, TSA regulations applicable to airport security address the risk that unauthorized persons may gain access to explosives being transported by aircraft at major airports. We are continuing our assessment of the security risks posed by the transportation of explosives by aircraft and will take appropriate regulatory action, after public notice and comment, to address those risks. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to air shipments of explosives permitted for transportation without an exemption under the HMR.

The TSA security regulations, including background check requirements, apply to nearly all of the explosives otherwise prohibited for transportation by air that are transported by air under the terms of an RSPA exemption. An applicant for an exemption or an exemption renewal to transport such prohibited explosives will be required to certify that it complies with all applicable TSA security requirements as part of the exemption application process. Those few applicants for an exemption that are not subject to the TSA security requirements will be required to certify as part of the exemption application or renewal that none of the ''prohibited persons'' listed in 18 U.S.C. 842(i), as amended by SEA, will participate in the transportation.

VIII. DOT Determination Under 18 U.S.C. 845(a)(1)

As noted above, 18 U.S.C. 845(a)(1) provides an exception to the prohibited persons provisions in 18 U.S.C. 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air, which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety.''

DOT is authorized by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) to designate material, including an explosive, as hazardous when transporting that material in commerce in a particular amount and form may pose an unreasonable risk to health, safety, or security. 49 U.S.C. 5103. DOT regulations applicable to the transportation of explosives by all modes include the classification, packaging, hazard communication, and operational requirements described elsewhere in this preamble and the driver licensing and qualification requirements established by FMCSA and incorporated into the HMR. Further, the HMR include specific requirements for security plans and training adopted in the HM–232 final rule. Under this final rule, the HMR also incorporate USCG and TSA security regulations applicable to the transportation of explosives in commerce.

As discussed in detail above, we assessed the security risks associated with the transportation in commerce of explosives as defined in 18 U.S.C. 841(c)–(f). Based on this assessment, we concluded that the most significant security risks are associated with the transportation of explosives shipments in quantities that require placarding

under the HMR. Thus, the HM–232 final rule requires persons who offer or transport shipments of explosives in all modes of transportation that must be placarded under the HMR to develop and implement security plans. Similarly, the TSA and FMCSA regulations implementing the USA PATRIOT Act provisions for commercial vehicle driver security, and incorporated into the HMR in this final rule, apply to drivers of commercial vehicles transporting explosives in amounts that require placarding.

Non-placarded shipments of explosives are not subject to these requirements. We have determined that non-placarded shipments do not present a sufficient security risk in transportation, at this time, to warrant application of the TSA background check requirements to persons who transport those shipments in commerce or to persons who possess those shipments incidental to transportation in commerce, including persons subject to 18 U.S.C. 842(i). We are continuing our assessment of the security risks posed by the transportation of non-placarded shipments of explosives in commerce and will take appropriate regulatory action, after public notice and comment, to address those risks.

Nevertheless, non-placarded shipments of explosives continue to be subject to general HMR requirements governing packaging and hazard communication. These risk-based safety requirements also enhance overall transportation security. For example, for high hazard shipments, such as Class 1 materials, the stringent packaging required by the HMR to enhance the safety of the shipment in transportation makes it difficult for someone to tamper with the shipment for a criminal or terrorist purpose. Similarly, shipping documents help shippers, carriers, and consignees account for specific shipments and identify discrepancies or missing packages. In addition, under the HM–232 final rule, hazardous materials employers must assure that all hazardous materials employees receive security awareness training. Such training must include an awareness of the security risks associated with hazardous materials transportation and a component covering how to recognize and respond to possible security threats.

DOT's decision as to whether a particular hazardous material, including an explosive, presents a sufficient security risk when transported in commerce to justify background check or other security requirements is determinative. The TSA and FMCSA regulations implementing the USA PATRIOT Act and incorporated into the HMR in this final rule apply to the transport of placarded amounts of explosives by motor vehicle within the meaning of 18 U.S.C. 845(a)(1), and the provisions of 18 U.SC. 842(i) do not apply to persons engaged in such transportation in commerce. DOT has determined that the transportation of non-placarded shipments of explosives does not present a sufficient security risk to justify detailed security background check or other requirements at this time; in light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to persons engaged in such transportation in commerce.

For the transportation of explosives by vessel, USCG regulations, as incorporated into the HMR in this final rule, adequately address security risks associated with such transportation; in light of this determination, the provisions of 18 U.S.C. 842(i) do not apply.

Air carriers generally are prohibited from transporting hazardous materials in amounts that would require placarding if transported by highway or rail except under an exemption issued by RSPA. As noted above, DOT has determined that the transportation of explosives permitted for air transportation without an exemption under the HMR—including by persons listed in 18 U.S.C. 842(i)—does not present a sufficient risk to justify detailed background checks or other additional regulation at this time. As amended in this rule, the HMR requirements for explosives transported under exemption that would otherwise be prohibited for transportation by air require a certification that the applicant for the exemption complies with transportation security laws and regulations and also that none of the ''prohibited persons'' listed in 18 U.S.C. 842(i), as amended by SEA, will participate in the transportation. DOT will enforce the certification requirement for exemption holders. Thus, the DOT regulations adequately address the security risks associated with the transportation by aircraft of explosives in commerce at this time.

It should be noted that these DOT determinations related to the provisions of 18 U.S.C. 842(i) may be reassessed as we continue to identify and address security risks associated with the transportation of explosives. For example, in a rulemaking to be developed under Docket HM–232A we are evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks in transportation. Because of the potential impact of such enhanced security requirements on the economic viability of the hazardous materials transportation industry, any additional security requirements should be developed through normal notice-and-comment procedures, unless security threats justify expedited or emergency rulemaking.

IX. Comments on This Interim Final Rule

This interim final rule imposes a new requirement for persons applying for an exemption under 49 CFR part 107. For such persons, this interim final rule requires a certification that the applicant is in compliance with all applicable security laws and regulations. The new certification requirement will not add significantly to an exemption applicant's compliance costs. Because this interim final rule addresses essential security requirements necessary to promote public safety, we determined that it is impracticable and contrary to the public interest to precede it with a notice of proposed rulemaking and an opportunity for public comment. In addition, based on this determination, and our desire to ensure the uninterrupted movement of explosives in commerce, we have decided to make this rule immediately effective. We are requiring compliance with the substantive provisions of this rule 30 days after publication of this rule in the **Federal Register**.

The Regulatory Policies and Procedures of DOT (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We will consider all comments received on or before the closing date for comments. We will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

X. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Executive Order 12866 and the regulatory policies or procedures of the Department of Transportation (44 FR 11034). This final rule imposes minimal new compliance costs on the regulated industry. It incorporates into the HMR FMCSA,

TSA, and USCG requirements concerning security requirements related to the transportation of hazardous materials, including explosives, and adds a security certification requirement for applicants for exemptions from the HMR.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule imposes minimal new compliance costs on the regulated industry. It incorporates into the HMR FMCSA, TSA, and USCG requirements concerning security requirements related to the transportation of hazardous materials, including explosives, and adds a security certification requirement for applicants for exemptions from the HMR. I hereby certify that the requirements of this final rule will not have a significant impact on a substantial number of small entities.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements but does not impose any regulation with substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector.

F. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0051, Preemption Requirements with 4,219 burden hours, which includes information collection estimates for the exemptions application process. We are in the process of requesting OMB approval for extension of this approval; on February 5, 2003, we published a notice under Docket No. RSPA–2003–14307 requesting comments on extension of this approval (68 FR 5972).

We estimate that an application for an exemption will require 5 hours to complete. An application to renew an exemption will require one hour to complete. The addition of a security certification as part of an exemption application will not add any appreciable time to this process. Therefore, we are not resubmitting the approval request to OMB. Comments on the potential paperwork burden that may be associated with the new security certification requirement should be submitted to the docket identified for this interim final rule or to Docket No. RSPA–2003–14307.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

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

H. Environmental Assessment

There are no significant environmental impacts associated with this final rule. It incorporates into the HMR FMCSA, TSA, and USCG requirements concerning security requirements related to the transportation of hazardous materials, including explosives, and adds a security certification requirement for applicants for exemptions from the HMR.

I. Privacy Act

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

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

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

49 CFR Part 176

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

49 CFR Part 177

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

■ In consideration of the foregoing, we are amending 49 CFR Parts 107, 171, 176, and 177, as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Section 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

■ 2. In § 107.105, paragraph (c)(10) is added to read as follows:

§ 107.105 Application for exemption.

* * * * *

(c) * * *

(10) A certification that the applicant is in compliance with transportation security laws and regulations. When a Class 1 material is forbidden for transportation by air except under an exemption (*see* Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft must also certify that no person within the

categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

■ 3. In § 107.109, paragraph (a)(6) is added to read as follows:

§ 107.109 Application for renewal.

(a) * * *

(6) Include a certification that the applicant is in compliance with transportation security laws and regulations. When a Class 1 material is forbidden for transportation by air except under an exemption (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft must also certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

■ 5. In § 171.12a, paragraph (b)(19) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(19) Rail and motor carriers must comply with 49 CFR 1572.9 and 49 CFR 1572.11 to the extent those regulations apply, when transporting Class 1 materials.

PART 176—CARRIAGE BY VESSEL

■ 6. The authority citation for part 176 continues to read as follows:

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

■ 7. Section 176.7 is added to read as follows:

§ 176.7 Documentation for vessel personnel.

Each owner, operator, master, agent, person in charge, and charterer must ensure that vessel personnel required to have a license, certificate of registry, or merchant mariner's document by 46 CFR parts 10 and 12 possess a license, certificate or document, as appropriate.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 8. The authority citation for part 177 continues to read as follows:

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

■ 9. Section 177.804 is revised to read as follows:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

Motor carriers and other persons subject to this part must comply with 49 CFR part 383 and 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.

Issued in Washington DC on April 25, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–10828 Filed 5–2–03; 8:45 am]

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Federal Register

Monday,
May 5, 2003

Part V

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2001–11117]

RIN 2126–AA70

Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit States from issuing, renewing, transferring or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a background records check of the applicant and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. This interim final rule implements part of the requirements of section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and certain provisions of the statutes dealing with explosives. The remaining requirements of section 1012 are implemented by a TSA interim final rule published elsewhere in today's issue of the **Federal Register**.

DATES: This rule is effective on May 5, 2003. State compliance with this rule is required by November 3, 2003. Comments must be received on or before July 7, 2003.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comments. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* by typing the last four digits of the docket number appearing in the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Valerie Height, (202) 366–0901, Regulatory Development Division, FMCSA, 400 7th 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:

Background

On September 11, 2001, several terrorist attacks were made against the United States, which resulted in catastrophic human casualties and property damage. Two commercial aircraft were hijacked and flown into the World Trade Center in New York; and a similar attack occurred against the Pentagon. A fourth aircraft went down near Pittsburgh, Pennsylvania—the result of a hijacking attempt. Soon after, letters containing anthrax—a dangerous biological substance—were delivered to media and congressional and postal offices in Florida, New York, and Washington, DC. Several more lives were claimed during these incidents. National security and intelligence officials continue to warn that future terrorist attacks against civilian targets are possible.

In response to these events, Congress passed the ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001'' (USA PATRIOT Act) [Pub. L. 107–56, October 26, 2001, 115 Stat. 272]. Sec. 1012 of the USA PATRIOT Act [115 Stat. 396] amended the Hazardous Materials Transportation Act (49 U.S.C. chapter 51) by adding a new § 5103a entitled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides that ''[a] State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined * * * that the individual does not pose a security risk warranting denial of the license.'' There is no ''hazmat license'' *per se*, under State or Federal law, but Sec. 1012(b) amended the fitness and testing standards of the statute that created the Commercial Driver's License (CDL) program to require that drivers not be granted a CDL unless they have ''first been determined under section 5103a of this title as not posing a security risk warranting denial of the license'' [49 U.S.C. 31305(a)(5)(C)]. The Department of Transportation (DOT) therefore interprets the license referred to in § 5103a as the hazardous materials endorsement to a CDL, which is required by 49 CFR 383.93(b)(4). To qualify for the endorsement, the individual must first pass a specialized hazardous materials knowledge test (§ 383.121) in addition to the requisite general knowledge and skills tests. Section 5103a is therefore a *de facto* amendment to the CDL legislation.

FMCSA shares with TSA the responsibility for implementing the requirements of Sec. 1012. TSA has developed regulations governing the security risk determination process (see 49 CFR Part 1572) and has responsibility for that program. FMCSA has revised its regulations to require State licensing agencies to issue or renew a hazardous materials endorsement for a CDL only if TSA has determined that the applicant does not pose a security risk warranting denial of such endorsement. For the purpose of determining applicability, a CDL renewal, transfer, or upgrade is also considered a new issuance and falls within the scope of these requirements, if it involves a hazardous materials endorsement.

This interim final rule (IFR) is effective upon publication in the **Federal Register**. States, however, will not be required to comply with the requirements of the rule until November 3, 2003. This will allow TSA sufficient time to confer with the States and other entities about the best means of carrying out the TSA rule.

Definitions

Consistent with the requirements of Sec. 1012, the FMCSA is amending 49 CFR 383.5 to add the term ''alien'' and to revise the existing terms ''hazardous materials'' and ''commercial motor vehicle.'' Under Sec. 1012, ''alien'' has the same meaning given the term in Sec. 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), *i.e.*, any individual not a citizen or national of the United States.

Similarly, § 5103a(b)(2) expanded the meaning of ''hazardous materials'' to include ''any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General to pose a threat to national security.'' FMCSA has worked closely with the Department of Justice and the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), in defining an appropriate list. After careful consideration, and with the agreement of TSA, FMCSA has decided to cross-reference the CDC list of Select Agents and Toxins in 42 CFR, part 73. A hazardous material is therefore defined as any material that: (1) in accordance with Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), has been determined to pose an unreasonable risk to health, safety, and property when transported in commerce and that is required to be placarded under subpart F of part 172 of the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180); or (2) any quantity of any material listed as a select agent or toxin by CDC in 42 CFR part 73.

The HMR do not require placarding for the transportation of all hazardous materials, because the Research and Special Programs Administration (RSPA) has determined that some such materials do not pose serious risks in smaller quantities. For example, explosives (Class 1 hazardous materials) may not be transported unless they have been tested, classified and approved by the agency. Class 1 materials are divided into six divisions, depending on the degree and nature of the explosive hazard presented. A Division 1.1 material presents a mass explosive hazard, *i.e.*, virtually the entire amount explodes simultaneously. A Division 1.4 material, on the other hand, has a minor explosion hazard that is largely confined to the package and does not involve projection of fragments. And some explosives, when mixed with other materials, will not explode at all. RSPA's regulations therefore require placards for the transportation of explosives and other hazardous materials that pose significant threats to the public, but not for those which are unlikely to cause harm, whether because of their chemical properties, minimal quantities, or for other reasons. RSPA has determined that non-placarded shipments do not present a sufficient security risk in transportation to warrant the application at this time of the TSA background check requirements to persons who possess or transport such materials.

Conforming changes were made to the § 383.5 definition of a commercial motor vehicle and the description of a hazardous materials endorsement under § 383.93(b)(4) to ensure that drivers newly covered by the hazardous materials definition—transporters of any quantity of any material defined as a Select Agent or Toxin under CDC regulations—are required to obtain a CDL with a hazardous materials endorsement, and are subject to the new TSA security screening process for drivers. Paragraph (d) under the § 383.5 definition of a commercial motor vehicle (CMV) now cross-references the new hazardous materials definition. This change effectively broadens the scope of the CMV definition to include vehicles of any size that are used to transport any quantity of a Select Agent or Toxin. Likewise, the hazardous materials endorsement description under § 383.93(b)(4) now references a vehicle ''[u]sed to transport hazardous materials as defined in § 383.5 of this part.''

Limitation on Learner's Permit

In order to make the rules governing the CDL learner's permit consistent with the purpose of Sec. 1012 and TSA's implementing regulations, § 383.23(c) has been amended to provide that a learner's permit does not authorize the holder of the permit to transport hazardous materials as defined in § 383.5. A person with a learner's permit must pass the general knowledge and skills tests (§§ 383.111, 383.113), the special hazardous materials knowledge test (§ 383.121), and the TSA background records check before he/she is eligible for a CDL with a hazardous materials endorsement.

Changes in State Procedures and Requirements

Several important changes to commercial driver's licensing procedures and regulations are required to implement this rule. These revisions will only apply to licensing procedures for hazardous materials endorsements issued with a CDL.

The driver application (§ 383.71) and State licensing (§ 383.73) procedures have been amended to require all individuals to pass the TSA security screening process when renewing, upgrading, transferring, or newly applying for a CDL with a hazardous materials endorsement.

Similarly, new subpart I prohibits the issuance of a hazardous materials endorsement for a CDL unless TSA has determined that the applicant does not pose a security risk warranting denial of the endorsement. Section 383.141(c) requires a State to notify an individual at least 180 days (6 months) prior to the expiration date of the CDL or hazardous materials endorsement that he/she must pass the new TSA security screening process as a prerequisite to obtaining a hazardous materials endorsement, and therefore must immediately begin the renewal process. All States should urge drivers who intend to reapply to do so as soon as possible after receiving the notification. This will prevent the security risk review from unnecessarily delaying the renewal process.

States have widely varying renewal periods for CDLs and hazardous materials endorsements. To ensure that each holder of a hazardous materials endorsement for a CDL routinely and uniformly receives a security screening, § 383.141(d) requires States to adopt, at minimum, a 5-year renewal cycle for a hazardous materials endorsement for a CDL. As the TSA rule indicates, however, background checks utilizing the names of, and biographical data on, all drivers currently holding hazardous materials endorsements will begin almost immediately. If a driver is found not to meet its security threat assessment standards, TSA will notify the State that his/her hazardous materials endorsement should be revoked.

The TSA rule also addresses the prohibitions in 18 U.S.C. 842(i), which were recently amended by Sec. 1123 of the Homeland Security Act [Pub. L. 107–296, November 25, 2002, 116 Stat. 2135, at 2283]. Sec. 842(i) makes it a criminal offense for certain persons to ship or transport explosives in interstate commerce, or to receive or possess any explosive so shipped or transported. This prohibition applies to a person who is under indictment for, or convicted of, a felony [§ 842(i)(1)]; is a fugitive from justice [§ 842(i)(2)]; is an unlawful user of, or addicted to, a controlled substance [§ 842(i)(3)]; has been adjudicated a mental defective or committed to a mental institution [§ 842(i)(4)]; is an alien, except permanent resident aliens and certain other specified aliens [§ 842(i)(5)]; was discharged from the U.S. armed forces under dishonorable conditions [§ 842(i)(6)]; or has renounced U.S. citizenship [§ 841(i)(7)].

The prohibition in § 842(i), however, does not apply to any aspect of the commercial transportation of explosives which is regulated by the Department of Transportation and which pertains to safety [18 U.S.C. 845(a)(1)]. The Department of Justice has interpreted this provision to exempt persons from application of § 842(i) when (1) DOT has actually regulated a relevant aspect of

the transportation of explosives, and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of § 845(a)(1), if DOT determines that persons engaged in certain aspects of the transportation of explosives do not pose a security risk and do not warrant regulation, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.

The hazardous materials regulations promulgated by the Research and Special Programs Administration (RSPA) extensively regulate the movement of explosives [49 CFR Parts 171–180]. Furthermore, TSA's rule prohibits a person from obtaining a hazardous materials endorsement to CDL if he or she is under indictment for or convicted of a broad range of felonies [49 CFR 1572.5(d)(1)(ii) and 1572.103(a)(1), (a)(3), and (b)]; is a fugitive [§§ 1572.5(d)(1)(ii) and 1572.103(a)(3)]; has been adjudicated a mental defective or committed to mental institution [§ 1572.5(d)(1)(iii)]; is an alien, with certain exceptions [§§ 1572.5(d)(1)(i) and 1572.105]; or has renounced U.S. citizenship [§§ 1572.5(d)(1)(i) and 1572.105]. TSA also has addressed the security risk that individuals who have been dishonorably discharged from the armed services pose. For example, a discharge from the U.S. armed forces under dishonorable conditions is usually the result of a conviction in military court, and some such convictions will disqualify a person from holding a hazardous materials endorsement under this rule. Therefore, FMCSA believes that TSA has addressed § 842(i)(6). FMCSA has a comprehensive regulatory regime to disqualify drug users from operating commercial motor vehicles [49 CFR Part 382] which we believe addresses § 842(i)(3).

This interim final rule, by requiring States to comply with the TSA rule on background checks, essentially incorporates into the Federal Motor Carrier Safety Regulations the TSA regulations governing eligibility for a hazardous materials endorsement. Taken together, RSPA's hazardous materials regulations, FMCSA's drug and alcohol testing regulations, and FMCSA's CDL regulations which incorporate by reference TSA's standards for obtaining a hazardous materials endorsement, fully address the prohibitions in 18 U.S.C. 842(i) and thus, pursuant to 18 U.S.C. 845(a)(1), preclude application of § 842(i)(1)–(7) to persons engaged in the commercial transportation of hazardous materials by motor vehicle.

Some of the requirements of the TSA rule apply directly to drivers seeking hazardous materials endorsements, others to the States that issue such endorsements. Sec. 1012 of the USA PATRIOT Act imposes certain requirements on the States. Sec. 1012(b) [49 U.S.C. 31305(a)(5)(C)] authorizes FMCSA to require States to comply with TSA regulations adopted to carry out Sec. 1012(a). The TSA rule, however, is also based on other statutory authorities which enable that agency to impose requirements directly on applicants for hazardous materials endorsements. In amending 49 CFR part 384, which sets the minimum standards that State CDL programs must maintain in order to avoid the withholding of Federal-aid highway funds, FMCSA has therefore distinguished between those provisions of the TSA regulation that are based on Sec. 1012 and apply to States, and those provisions that apply to drivers. For example, 49 C.F.R. 1572.5(e) requires States to have applicants complete a form that includes specific information, while § 1572.5(b)(1)(iii) requires anyone holding a hazardous materials endorsement who is convicted of, or under indictment for, a disqualifying crime listed in § 1572.103 to report the offense to the State of issuance and surrender the endorsement to the State. The first requirement applies to the State, the second does not. A State therefore would not be penalized if drivers failed to comply with § 1572.5(b)(1)(iii) or some other provision that applies directly to drivers rather than the State.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA), an agency may, for good cause, immediately promulgate a final rule if it finds that prior notice and opportunity for comment ''are impracticable, unnecessary, or contrary to the public interest'' [5 U.S.C. 553(b)(3)(B)].

The catastrophic effect of the attacks on the World Trade Center and Pentagon on September 11, 2001, revealed the vulnerability of the nation's transportation system to terrorism. National security and intelligence officials warn that future terrorist attacks are likely. The number of commercial motor vehicles that carry hazardous materials is far greater than the number of aircraft that might be hijacked by terrorists. Sec. 1012 of the USA PATRIOT Act is an attempt to increase the security of highway transportation of hazardous materials. In view of the urgency of putting into operation the background records checks required by the Act, FMCSA finds that prior notice and opportunity for comments are both impracticable and contrary to the public interest. The delays inherent in such a process could make the difference between stopping and overlooking a terrorist threat.

This rule is effective upon publication, although compliance will be delayed for 180 days to allow TSA to consult with the States and other parties about the best means of conducting background checks on CDL-holders who have or want a hazardous materials endorsement. During that period, we are soliciting public comments on the rule and will later make changes that may be required, either because of the comments submitted or experience with the IFR. This rule, however, must remain consistent with the requirements imposed by TSA's companion rule. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file relevant information in the docket as it becomes available after the comment period closing date. Please continue to review the docket for new material.

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

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in security issues since the events that occurred on September 11, 2001. This IFR implements some of the requirements of Sec. 1012 of the USA PATRIOT Act by prohibiting States from issuing or renewing a CDL endorsement to operate a motor vehicle transporting a hazardous material unless TSA has determined that the applicant does not pose a security risk warranting denial of the license. Along with RSPA and TSA rules, it also addresses 18 U.S.C. 842(i) and 845(a)(1).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), an agency is required to evaluate proposed rulemakings to determine the effects of its action upon small entities. FMCSA does not believe that these proposals meet the threshold values for requiring

a full-blown regulatory analysis, since the anticipated impact is fairly small.

On October 24, 2001, the President signed the USA PATRIOT Act of 2001. The changes promulgated by this rule and the corresponding TSA rule are a direct response to this legislation.

These two rulemakings are the first implementing regulations for Sec. 1012; there are no Regulatory Flexibility Act comments to analyze.

According to the FMCSA Motor Carriers Management Information System (MCMIS) as of March 4, 2002, 59 percent (24,545) of the 41,527 carriers who haul hazardous materials have 6 or fewer power units (tractors), compared with 76 percent for all motor carriers. The Small Business Administration (SBA) defines small entities by their amounts of revenue, but FMCSA does not gather financial information on carriers. We use 6 power units as a proxy for small entities. Hazardous materials are thus more likely to be transported by motor carriers that are not small than is freight transported by trucks in general (*i.e.*, 41 percent of hazardous materials carriers are above the 6-power-unit threshold, compared to 24 percent of the industry as a whole).

Although these small entities will have to keep records on the status of all of their employees' hazardous materials endorsements, there is no additional administrative cost to them because they already have to maintain those records under the current system. These small businesses might be adversely affected if the number of available drivers who can qualify under TSA rules is significantly reduced. In that case, employers might find that they have to pay hazardous materials drivers a premium wage in order to continue to provide their level of service. Aggregate criminal history data on CMV drivers have never been compiled, however, and neither FMCSA nor TSA has any basis for estimating the number who may be disqualified by the TSA rule.

Because this rule is expected to have only a minimal impact upon small businesses, no special steps were taken to further minimize its impact.

The FMCSA is not aware of any other rules or procedures that duplicate or conflict with this rule.

Allowing differences in compliance or reporting for small entities would be contrary to the intent of Congress in issuing this mandate. The purpose of Sec. 1012 of the USA PATRIOT Act is to reduce the risk that potential terrorists will gain access to hazardous materials. If other, less costly, methods were available to attain the same end, they would be employed instead. However, the FMCSA does not believe any such alternatives exist.

Therefore, the FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria in the Executive Order on Federalism (E.O. 13132, August 4, 1999, *see* 64 FR 43255, August 10, 1999) and it has been determined that the rule does not have federalism implications or a substantial direct effect on the States.

Although the CDL regulations (49 CFR part 383) issued to implement the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) apply to commercial motor vehicles (CMVs) operating in intrastate as well as interstate commerce [see 49 U.S.C. 31301(2)], they do not preempt State law. Instead, the Department of Transportation is required to withhold certain Federal-aid highway funds when a ''State does not comply substantially with a requirement of [49 U.S.C.] 31311(a)'' [see 49 U.S.C. 31314].

Sec. 1012 of the USA PATRIOT Act, however, codified the requirements for background records checks of hazardous materials drivers in 49 U.S.C. chapter 51. Regulations based on chapter 51 generally preempt inconsistent State, local, or tribal laws and regulations [see § 5125]. Notwithstanding its codification in chapter 51, Sec. 1012 is essentially an amendment to the CDL statute. That is especially apparent in Sec. 1012(b), which added a new subparagraph (C) to the ''General driver fitness and testing'' requirements in § 31305(a)(5) of the CMVSA. The amended provision says that the Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations * * * shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material * * * is licensed by a State to operate the vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license [49 U.S.C. 31305(a)(5)(C)]. Sec. 1012(b) thus transforms the procedures and result of the security review described in 49 U.S.C. 5103a into a prerequisite for a hazardous materials endorsement under chapter 313.

Sec. 1012(b) has additional ramifications. Under 49 U.S.C. 31311(a), [t]o avoid having amounts [of Federal-aid highway funds] withheld from apportionment under section 31314 of this title, a State shall comply with the following requirements: The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary under section 31305(a) of this title * * *.

Section 31314(a), in turn, provides that [t]he Secretary of Transportation shall withhold 5 percent of the amount [of Federal-aid highway funds] required to be apportioned to a State under section 104(b) (1), (3), and (4) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

A State that issues a hazardous materials endorsement to a CDL without complying with the TSA requirements implementing § 5103a has thus violated § 31305(a)(5)(C). Since § 31311(a)(1) requires compliance with § 31305(a) in order to avoid funding sanctions under § 31314, the FMCSA can withhold for the first year of noncompliance 5% (and 10% thereafter) of a State's annual apportionment of National Highway System, Surface Transportation Program, and Interstate Maintenance funds [23 U.S.C. 104(b) (1), (3), and (4), respectively].

In short, because the purpose of Sec. 1012(b) was to incorporate the background records check into the CDL requirements, and because noncompliance with the CDL requirements triggers funding sanctions, FMCSA has concluded that the only appropriate means to enforce TSA's rule implementing Sec. 1012 is to withhold Federal-aid highway funds from States that fail to comply with that rule or this rule. In view of the obvious implications of Sec. 1012(b), the agency is persuaded that non-complying States cannot be subjected to the mechanisms otherwise available to enforce regulations based on chapter 51, *i.e.*, injunctive action [§§ 5122, 5125], civil penalties [§ 5123] or criminal penalties [§ 5124].

The FMCSA has determined that the rule does not have federalism implications, *i.e.*, 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 (Sec. 1(a), E.O. 13132). In order to avoid the withholding of Federal-aid highway funds, all of the States have long since adopted CDL programs consistent with

the requirements of 49 CFR part 383. The security risk review mandated by this rule and the corresponding TSA rule is merely an incremental addition to the broader CDL requirements and will be managed by State licensing personnel who are already familiar with that program. The amendments to part 383 included in this rule will not have a substantial direct effect on the States or change the relationship between the national government and the States.

Sec. 4(c) of E.O. 13132 also provides that [a]ny regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated. FMCSA has tailored this IFR as narrowly as possible to the purposes of Sec. 1012. Furthermore, the rule does not preempt State law.

Sec. 3(a) of E.O. 13132 requires Federal agencies, ''[t]o the extent practicable,'' to consult with State and local officials before taking actions that have federalism implications. As discussed above, this rule does not have federalism implications requiring consultation. In any case, formal consultation with the States before issuing this rule would not be ''practicable,'' because the objectives of Sec. 1012 and the continued threat of terrorism require implementation of the security risk review at the earliest possible moment. Nonetheless, FMCSA has communicated with all of the States on this issue. The Assistant Administrator wrote to licensing officials in each State on October 31, 2001, briefly summarizing Sec. 1012 and asking them to continue issuing and renewing hazardous materials endorsements until the rulemaking necessary to implement the new requirement had been completed. Furthermore, DOT and TSA have held extensive discussions with the Compact Council created pursuant to the National Crime Prevention and Privacy Compact Act of 1998 [42 U.S.C. 14616] about the requirement that fingerprints be submitted when seeking criminal history record checks for noncriminal justice purposes. The new regulations and the corresponding implementation plans have been explained to Compact Council, nine of whose fifteen members are State officials.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. An analysis of this rule has been made by the FMCSA, and it has been determined that it will affect the information collection burden associated with the currently-approved information collection covered by OMB Control No. 2126–0011, entitled ''Commercial Driver Licensing and Test Standards.'' The OMB approved the most recent update of this information on October 3, 2002, at 819,982 burden hours. The approval period runs through October 31, 2005.

This IFR will increase the burden hours associated with this information collection by 17,250 hours. The implementation of this IFR will require the State DMVs to enter into the Commercial Driver's License Information System (CDLIS) an indication of whether the applicant is a U.S. citizen or resident alien (and if a resident alien, the alien registration number); and whether the driver is or is not a security risk. We estimate the time required to add this information to CDLIS to be approximately 1 minute, and the number of annual hazardous materials endorsement applications to be 1,035,000 per year. Therefore, we estimate the additional burden associated with this IFR to be 17,250 hours (1,035,000 x 1 minute, divided by 60 minutes).

We estimate the additional costs to the State DMVs associated with this information collection to be approximately $765,000. This will be a one-time cost that each State and the District of Columbia (at $15,000 per State) would need to expend to update their systems to accommodate the new fields and recordkeeping requirements of this IFR.

We particularly request your comments on whether the collection of information is necessary for FMCSA to achieve the purpose of Sec. 1012 in helping to prevent terrorist incidents, including (1) whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on the information collection burden addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by August 4, 2003. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

FMCSA has analyzed this rule under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and has determined that it will not have a significant impact on the quality of the human environment. The rule will slightly expand the number of commercial drivers who must obtain a hazardous materials endorsement and require minor changes to State regulations and procedures. The TSA rule, which this rule is designed in part to enforce, will disqualify an unknown number of drivers who have been convicted of certain offenses from holding a hazardous materials endorsement to a CDL. That should reduce the risk that hazardous materials could be used as a terrorist weapon. The net effect of these two rules on the human and physical environment is expected to be positive.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of Section 4(b) of the Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

FMCSA anticipates that the TSA rule, which this rule requires the States to comply with, will prevent some drivers with criminal records from receiving or renewing hazardous materials endorsements. As mentioned above, however, comprehensive criminal history data on CMV drivers do not exist, and neither FMCSA nor TSA can reliably estimate the number who may be disqualified by the TSA rule. Anecdotal evidence suggests that the number of drivers who have committed the serious disqualifying offenses listed in the TSA rule is quite small. In addition, endorsements will henceforth

be available only to U.S. citizens or lawful permanent resident aliens. FMCSA has no information on the number of temporary legal—or illegal—aliens who may currently hold hazardous materials endorsements. This rule has no effect on the supply or use of energy, nor do we believe it will cause a shortage of drivers qualified to distribute energy (*e.g.*, gasoline, fuel oil, etc.). If the number of drivers with hazardous materials endorsements drops noticeably as a result of this rule, they might be able to command higher wages, but we expect the supply of drivers to be adequate to meet the demand.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting 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. (2 U.S.C. 1531 *et seq.*) States will have to make changes to their licensing procedures under this rule. Associated with those changes will be modest set-up costs as well as more significant ongoing costs to process the applications for hazardous materials endorsements. However, we assume that States will charge applicants for a hazardous materials endorsement a fee sufficient to cover their added costs.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This IFR requires States to comply with the TSA rule on background records checks prior to obtaining a hazardous materials endorsement authorizing a driver to transport hazardous materials in commerce. Specifically, it requires the applicant to pass a TSA screening process for the purpose of determining whether the individual is a security risk. This action will not cause an increase in the number of hazardous materials incidents, nor increase the number of non-hazardous materials commercial motor vehicle crashes. Its purpose is to ensure public safety by preventing the use of a commercial motor vehicle hauling hazardous materials in the commission of terrorist acts against the United States. Therefore, the FMCSA certifies that this action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

■ For the reasons set forth in the preamble, the FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES [AMENDED]

■ 1. Revise the authority citation for part 383 to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; Sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; and 49 CFR 1.73.

■ 2. Amend § 383.5 to add in alphabetical order a new definition for ''alien'' and to revise the definitions of ''commercial motor vehicle'' and ''hazardous materials'' as follows:

§ 383.5 Definitions.

* * * * *

Alien means any person not a citizen or national of the United States.

* * * * *

* * * * *

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

* * * * *

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

* * * * *

■ 3. Amend § 383.23 to revise paragraph (c) to read as follows:

§ 383.23 Commercial driver's license.

* * *

(c) *Learner's permit.* State learners' permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(1) The learner's permit holder is at all times accompanied by the holder of a valid CDL;

(2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses; and

(3) He/she does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

■ 4. Amend § 383.71 to add a new paragraph (a)(9) and revise paragraphs (b)(3), (c)(3) and (d) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(9) If applying for a hazardous materials endorsement, comply with Transportation Security Administration requirements codified in 49 CFR Part 1572, and provide proof of citizenship or immigration status as specified in Table 1 to this section. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration Services (BCIS) Alien registration number.

TABLE 1 TO § 383.71—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR IMMIGRATION

Status	Proof of status
U.S. Citizen	• U.S. Passport • Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States • Certification of Birth Abroad issued by the U.S. Department of State (Form FS–545 or DS 1350) • Certificate of Naturalization (Form N–550 or N–570) • Certificate of U.S. Citizenship (Form N–560 or N–561)
Lawful Permanent Resident.	• Permanent Resident Card, Alien Registration Receipt Card (Form I–551) • Temporary I–551 stamp in foreign passport • Temporary I–551 stamp on Form I–94, Arrival/Departure Record, with photograph of the bearer • Reentry Permit (Form I–327)

(b) * * *

(3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements for such endorsement specified in § 383.71(a)(9) and State requirements as specified in § 383.73(b)(4);

* * * * *

(c) * * *

(3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in § 383.71(a)(9) and pass the test specified in § 383.121 for such endorsement.

* * * * *

(d) *License upgrades.* When applying to operate a commercial motor vehicle in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all persons shall:

(1) Provide the necessary certifications as specified in § 383.71(a)(1) and (a)(4);

(2) Pass all tests specified in § 383.71(a)(2) and (a)(3) for the new vehicle group and/or different endorsements; and

(3) To obtain a hazardous materials endorsement, comply with the requirements for such endorsement specified in § 383.71(a)(9).

* * * * *

■ 5. Amend § 383.73 to add new paragraphs (a)(5), and revise paragraphs (b)(4) introductory text, (c)(4), and (d)(1) to read as follows:

§ 383.73 State procedures.

(a) * * *

(5) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in § 383.71(a)(9).

(b) * * *

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in § 383.71(a)(9) and ensure that the driver has, within the 2 years preceding the transfer, either:

* * * * *

(c) * * *

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in § 383.121 and comply with the standards specified in § 383.71(a)(9) for such endorsement.

(d) * * *

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in § 383.71(d); and

* * * * *

■ 6. Amend § 383.93 to revise paragraph (b)(4) to read as follows:

§ 383.93 Endorsements.

* * * * *

(b) * * *

(4) Used to transport hazardous materials as defined in § 383.5, or

* * * * *

■ 7. Add a new Subpart I to this part to read as follows:

Subpart I—Requirement for Transportation Security Administration approval of hazardous materials endorsement issuances

§ 383.141 General.

(a) *Applicability date.* Beginning on November 3, 2003, this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

(b) *Prohibition.* A State may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a CDL to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the Transportation Security Administration has determined that the individual does not pose a security risk warranting denial of the endorsement.

(c) *Individual notification.* At least 180 days prior to the expiration date of the CDL or hazardous materials endorsement, a State must notify the holder of a hazardous materials endorsement that the individual must pass a Transportation Security Administration security screening process as part of any application for renewal of the hazardous materials endorsement. Before November 3, 2003, a State must give the holder of a hazardous materials endorsement as much advance notice as practicable. The notice must advise a driver that, in order to expedite the security screening process, he or she should file a renewal application as soon as possible, but not later than 90 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security screening process referenced in paragraph (b) of this section may not be issued a hazardous materials endorsement.

(d) *Hazardous materials endorsement renewal cycle.* Each State must require that hazardous materials endorsements be renewed every 5 years or less so that individuals are subject to a Transportation Security Administration security screening requirement referenced in paragraph (b) of this section at least every 5 years.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM [AMENDED]

■ 8. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

■ 9. Add new § 384.233 to read as follows:

§ 384.233 Background records checks.

(a) The State shall comply with Transportation Security Administration requirements concerning background records checks for drivers seeking to obtain, renew, transfer or upgrade a hazardous materials endorsement in 49 CFR Part 1572, to the extent those provisions impose requirements on the State.

(b) The State shall comply with each requirement of 49 CFR 383.141.

Issued on: April 25, 2003.

Warren E. Hoemann,

Acting Deputy Administrator.

[FR Doc. 03–10829 Filed 5–2–03; 8:45 am]

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Part VI

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1570 and 1572

Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1570 and 1572

[Docket No. TSA–2003–14610; Amendment No. 1572–1]

RIN 1652–AA17

Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Interim final rule; request for comments.

SUMMARY: The Transportation Security Administration (TSA) is amending the Transportation Security Regulations to establish security threat assessment standards for determining whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a commercial drivers license (CDL). TSA is also establishing procedures for seeking a waiver from the standards and for appealing a security assessment determination.

TSA is issuing this interim final rule in coordination with a separate interim final rule being issued by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA rule amends the Federal Motor Carrier Safety Regulations governing commercial drivers licenses to prohibit States from issuing, renewing, transferring, or upgrading a commercial drivers license with a hazardous material endorsement unless the Department of Justice has first conducted a background records check of the applicant and the TSA has determined that the applicant does not pose a security threat warranting denial of the hazardous materials endorsement. These interim final rules implement the background records check requirements of section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and also establish requirements regarding the transportation of explosives in commerce.

DATES: This final rule is effective May 5, 2003. Comments must be received on or before July 7, 2003.

ADDRESSES: *Comments Submitted by Mail:* Address written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2003–14610 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. TSA–2003–14610.'' The postcard will be date-stamped and mailed to you.

Comments Filed Electronically: You may also submit comments through the Internet at *http://dms.dot.gov*.

Reviewing Comments in the Docket: You may review the public docket containing comments on this proposed rule in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues, Stephen Sprague, Office of Maritime and Land, Transportation Security Administration Headquarters, West Building, Floor 9, 400 Seventh Street, SW., Washington, DC 20590; e-mail: *patriotact@tsa.dot.gov;* telephone: 571–227–1500.

For legal issues, Dion Casey, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 400 Seventh Street, SW., Washington, DC 20590; e-mail: *Dion.Casey@tsa.dot.gov;* telephone: 571–227–2663.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim final rule is being adopted without prior notice and prior public comment. However, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with TSA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

TSA will consider all comments received on or before the closing date for comments. Comments filed after the closing date will be considered to the extent practicable.

See **ADDRESSES** above for information on how to submit comments.

Availability of Rulemaking Document

You can get an electronic copy of this final rule 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 digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information for the docket you selected, click on the final rule.

You also may get an electronic copy by accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html* or the TSA Laws and Regulations Web page at *http://www.tsa.dot.gov/public/index.jsp*, or by writing or calling the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section. You must identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this rulemaking document may contact the persons listed in ''For Further Information Contact'' for information. You can get further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Abbreviations and Terms Used in This Document

ATSA—Aviation and Transportation Security Act
ATF—Bureau of Alcohol, Tobacco, Firearms, and Explosives
CDC—Centers for Disease Control and Prevention
CDL—Commercial drivers license
DHS—Department of Homeland Security
DOJ—Department of Justice
DOT—Department of Transportation
FMCSA—Federal Motor Carrier Safety Administration
HSA—Homeland Security Act
HMR—Hazardous Material Regulations
MTSA—Maritime Transportation Security Act
RSPA—Research and Special Programs Administration

SEA—Safe Explosives Act
TSA—Transportation Security Administration
USA PATRIOT Act—Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

Background

On September 11, 2001, several terrorist attacks were made against the United States. Those attacks resulted in catastrophic human casualties and property damage. In response to those attacks, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA).[1] TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. As of March 1, 2003, TSA became an agency of the Department of Homeland Security (DHS), and the Under Secretary is now the Administrator. TSA continues to possess the statutory authority that ATSA established. ATSA granted to the Administrator responsibility for security in all modes of transportation.[2]

As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats.[3] The Administrator has an express mandate to identify and coordinate countermeasures to address threats to the transportation system, including the authority to receive, assess, and distribute intelligence information related to transportation security. TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities.[4]

This authority includes conducting background checks on individuals in the transportation industries. The background checks may include collecting fingerprints to determine if an individual has a criminal conviction or the use of a name and other identifying characteristics to determine whether an individual has committed international or immigration offenses. In aviation, TSA has statutory authority to conduct background checks on individuals with unescorted access to secured areas of aircraft and airports.[5] TSA has implemented this authority through a series of regulations that require fingerprint-based criminal history records checks (CHRC) for flightcrew members, individuals with access to secured areas of airports and aircraft, screeners, and supervisors. If the individual has committed a disqualifying criminal offense within a prescribed time period, the individual is denied unescorted access to secured areas.[6]

The Administrator is uniquely situated as an expert in transportation security, based on his functions, duties, and powers, to determine whether sufficient cause exists to believe that an individual poses a threat to transportation security.

USA PATRIOT Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001.[7] Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new section 5103a titled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides:

> A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.[8]

Section 5103a(a)(2) subjects license renewals to the same requirements.

FMCSA advised TSA that there is no ''hazmat license'' *per se* under State or Federal law, and that the ''hazmat license'' referred to in section 1012 of the USA PATRIOT Act is the hazardous materials endorsement to a commercial drivers license (CDL), which is required by 49 CFR 383.93(b)(4). Section 1012(b) of the Act amended 49 U.S.C. 31305(a)(5), which prescribes fitness and testing standards for individuals operating a commercial motor vehicle carrying a hazardous material, by adding a new paragraph that requires an individual to undergo a background records check before the State issues a CDL to that individual. To qualify for the hazardous materials endorsement, an individual must first pass a specialized knowledge test (49 CFR 383.121) in addition to the requisite general knowledge and skills tests required for a CDL.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a hazardous materials endorsement, to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary (as delegated to the Administrator of TSA) of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) A check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

Maritime Transportation Security Act

Congress enacted the Maritime Transportation Security Act (MTSA) on November 25, 2002.[9] Section 102 of MTSA requires the Secretary[10] to conduct background records checks for individuals with access to a secure area of a vessel or facility. It also requires the Secretary to establish procedures for processing appeals and applications for a waiver to security threat assessment standards.

TSA is including this discussion of the MTSA requirements because the agency plans to harmonize, to the extent possible, all of the various background checks that are required by statute, and so elements of MTSA appear in this rule. For instance, this rule requires a review of records for the preceding seven years in order to determine whether a conviction of a disqualifying criminal offense has occurred. This seven-year period is required by MTSA and is appropriate for use in the context of this rule.

Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.[11] Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not

[1] Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

[2] 49 U.S.C. 114(d).

[3] 49 U.S.C. 114(f)(1)–(5), (h)(1)–(4).

[4] 49 U.S.C. 114(f)(1) and (5).

[5] 49 U.S.C. 44936.

[6] 49 CFR parts 1542 and 1544.

[7] Pub. L. 107–56, October 25, 2001, 115 Stat. 272.

[8] The Secretary of Transportation delegated the authority to carry out the provisions of this section to the Under Secretary of Transportation for Security/Administrator. 68 FR 10988, March 7, 2003.

[9] Pub. L. 107–295, November 25, 2002, 116 Stat. 2064.

[10] ''Secretary'' is defined as the Secretary of the department in which the Coast Guard is operating. Effective March 1, 2003, the Coast Guard was transferred to the Department of Homeland Security under the Homeland Security Act.

[11] Pub. L. 107–296, November 25, 2002, 116 Stat. 2280.

lawfully ''ship or transport any explosive in or affecting interstate or foreign commerce'' or ''receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.'' Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal prosecution.[12] These incidents are investigated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of the Department of Justice and referred, as appropriate, to the United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertains to safety.'' Under this exception, if DOT regulations address the transportation security issues of persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce. For example, the regulations set forth in this rule disqualify persons convicted of certain felonies from obtaining a CDL with a hazardous materials endorsement. Because the regulations address a particular aspect of the safe transportation of explosives materials, *i.e.*, the threat to public safety posed by felons transporting hazardous materials, the exception contained in 18 U.S.C. 845(a)(1) applies, and felons transporting explosives in commerce would not be subject to criminal prosecution under section 842(i).

In addition, if DOT determines that certain aspects of the transportation of explosives do not pose a security threat and therefore do not warrant regulations, the exception contained in 18 U.S.C. 845(a)(1) also applies, and persons engaged in such transportation would not be subject to criminal prosecution under section 842(i). As discussed in greater detail throughout this document, this rule addresses all of the categories of individuals who are prohibited from transporting explosives via commercial motor carrier under the SEA, and thus 18 U.S.C. 845(a)(1) excepts those categories of individuals from prosecution under section 842(i) for activities occurring during and incident to the transportation of explosives in commerce.

On February 6, 2003, TSA issued a regulation, effective immediately, establishing temporary requirements for all Canadian motor carriers and rail carriers using non-resident aliens to transport explosives into the U.S.[13] In essence, the rule prohibits a Canadian commercial transporter of explosives from entering the U.S. unless he or she is identified as a known carrier. A transporter is considered a known carrier by submitting specified information to Transport Canada, an agency within the Canadian government that oversees transportation safety and security. Transport Canada conducts checks to ensure that the transporter is a legitimate entity authorized to do business in Canada, and that there are no security concerns with the transporter. Transport Canada forwards this information to TSA, which then conducts additional security checks and forwards the list of acceptable transporters to the U.S. Customs Service, which conducts checks at the U.S.-Canada border.

This rule triggers the exception in 18 U.S.C. 845(a)(1) for aliens entering the United States from Canada who are transporting, shipping, receiving, and possessing explosives incident to and in connection with the commercial transportation of explosives by rail, motor carrier, or water. Thus, such aliens will not violate 18 U.S.C. 842(i)(5) during such commercial transportation.

This rulemaking document includes this discussion of the SEA requirements because explosives are among the categories of substances that are defined as ''hazardous materials'' under FMCSA regulations at 49 CFR 383.5.[14] This rule is specifically crafted to invoke the section 845(a)(1) exception with respect to domestic transporters of explosives in the trucking industry. A companion rule, to be issued by FMCSA, will prohibit the issuance of a hazardous materials endorsement to an individual unless the individual has complied with TSA's security threat assessment regulations.

This rule prohibits an individual from holding a CDL with a hazardous materials endorsement if he or she (1) is an alien (unless he or she is a lawful permanent resident) or a U.S. citizen who has renounced his or her U.S. citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in civilian or military court for certain felonies; (4) has been adjudicated as a mental defective or committed to a mental institution; or (5) is considered to pose a security threat based on a review of various databases. In addition, FMCSA's existing CDL regulations prohibit individuals with a CDL from operating a commercial motor vehicle if he or she tests positive for a controlled substance, or has adulterated or substituted a test specimen for controlled substances.[15] Thus, TSA and FMCSA rules cover individuals convicted of serious felonies, aliens,[16] individuals under felony indictment, fugitives from justice, individuals adjudicated as mental defectives or committed to a mental institution, individuals who have renounced their U.S. citizenship, and unlawful users or addicts of any controlled substance.

TSA has also addressed the security risk that individuals who have been dishonorably discharged from the armed services pose. Under the Uniform Code of Military Justice, a person may only be dishonorably discharged if convicted of certain crimes. All crimes that may result in a dishonorable discharge do not give rise to a security threat. Under articles 133 and 134 of the Uniform Code of Military Justice, an individual may be dishonorably discharged for ''conduct unbecoming an officer'' and ''disorders and neglects to the prejudice of good order and discipline.'' These violations may include bigamy, fraternization, and drunk and disorderly conduct. TSA believes that in most cases, these actions would not affect an individual's ability to safely and

[12] The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to $250,000.

[13] 68 FR 6083, February 6, 2003, Docket No. TSA–2003–14421.

[14] *See also,* 49 CFR 173.50, which is the definition of explosives, promulgated by Research and Special Programs Administration.

[15] 49 CFR 382.215.

[16] TSA notes that the SEA does not prohibit lawful permanent residents and other narrow categories of aliens from transporting explosives. (18 U.S.C. 842(i)(5)). However, FMCSA's CDL regulations require a CDL holder to have a ''State of domicile,'' which is defined as ''that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.'' (49 CFR 383.5). Lawful permanent residents of the U.S. are the only aliens who have a State of domicile under this definition. Thus, they are the only aliens who are permitted to have a CDL.

securely transport explosives and hazardous materials. TSA does not believe it is advisable to penalize former members of the military for actions that would not necessarily impact a civilian CDL holder's ability to obtain or keep a hazardous materials endorsement. Also, it is important to note that an individual may be convicted of a serious felony and not be dishonorably discharged from military service. For these reasons, TSA has concluded that a careful analysis of the facts underlying a dishonorable discharge is necessary before concluding that an individual should be disqualified for reasons of transportation security. Therefore, TSA will review the underlying records to determine what action gave rise to a dishonorable discharge and take appropriate action. TSA will issue a notice of threat assessment for any individual convicted of a serious felony, at least those already included in the rule as a disqualifying criminal offense. For others, TSA will assess whether the underlying activity bears on an individual's ability to perform CDL responsibilities.

Finally, TSA is using a definition of hazardous materials that includes explosives, which is based on DOT's definition, as required by the USA PATRIOT Act.[17] A detailed discussion of the manner in which explosives and hazardous materials are regulated by DOT and ATF is necessary to understand the scope and rationale of this rule.

The hazardous material regulations (HMR) are issued by the Research and Special Programs Administration (RSPA), an agency within DOT. Under the HMR, which are based on the internationally recognized United Nations (UN) system for classification, identification, and ranking of hazardous materials, all hazardous materials are divided into nine general classes according to their physical, chemical, and nuclear properties as follows:

Class 1 Explosives
Class 2 Compressed, flammable, nonflammable, and poison gases
Class 3 Flammable liquids
Class 4 Flammable solids
Class 5 Oxidizers and organic peroxides
Class 6 Toxic and infectious materials
Class 7 Radioactive materials
Class 8 Corrosive materials
Class 9 Miscellaneous dangerous substances and articles

Within Classes 1, 2, 4, 5, and 6, there are more specifically defined divisions, and within Class 1 there are Compatibility Group subdivisions, as well. The hazard classes and divisions are not mutually exclusive. Certain hazardous materials have multiple dangerous properties, each of which must be addressed according to its relative potential to do harm. In these cases, the UN system and the HMR allow identification and communication of both the primary and subsidiary threats.

The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so. Class 1 materials are divided into six divisions. Assignment of an explosive to a division depends on the degree and nature of the explosive hazard presented. Thus, a Division 1.1 explosive is one that presents a mass explosive hazard. A mass explosion is one that affects almost the entire load simultaneously. A Division 1.2 explosive has a projection hazard, which means that if the material explodes, it will project fragments outward at some distance. A Division 1.3 explosive presents a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard. A Division 1.4 explosive has a minor explosion hazard that is largely confined to the package and does not involve projection of fragments. A Division 1.5 explosive is a very insensitive explosive that has a mass explosion potential, but is so insensitive that it is unlikely to detonate under normal conditions of transport. A Division 1.6 explosive is an extremely insensitive article that does not have a mass explosion hazard and demonstrates a negligible probability of accidental initiation or propagation. Specific materials that are covered by the definition of Class 1 materials include such items as blasting agents, propellants, detonators, various types of ammunition, explosives charges and projectiles, ammonium nitrate-fuel oil mixtures, rockets, fireworks, and warheads.

For explosives transportation, the HMR prohibit transportation of an explosive unless it has been tested, classed, and approved by the Associate Administrator for Hazardous Materials Safety, RSPA. The approval granted by the Associate Administrator specifies packaging and other transportation provisions that must be followed by the person who ships or transports the explosive material. In addition to packaging requirements, the HMR require explosives to be labeled and/or placarded to indicate the explosive hazard. Explosives shipments generally must be accompanied by shipping papers and emergency response information.

The HMR definition for a Class 1 material is test- and performance-based and, thus, accommodates newly developed materials and modifications to existing materials. Moreover, the HMR definition for a Class 1 material is consistent with definitions used and accepted internationally (*i.e.*, the UN Recommendations for the Transport of Dangerous Goods, the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Organization International Maritime Dangerous Goods Code), not only for transportation, but for many other applications, as well.

For the most part, the HMR definition of an explosive is consistent with the relevant definition established by the ATF. By statute, ATF regulates materials that are explosives, blasting agents, and detonators. An ''explosive'' is ''any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters;'' a ''blasting agent'' is, in part, ''any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive;'' and a ''detonator'' is ''any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.'' ATF supplements these statutory definitions with a list of specific materials, updated periodically, that are regulated as explosives. 18 U.S.C. 841(c)–(f). Certain statutory exemptions may apply. For example, certain types and quantities of black powder may be exempt from ATF regulation. 18 U.S.C. 845(a)(5).

Because the various definitions used by DOT and ATF are not identical, some materials are treated differently by the two agencies. For example, ATF lists several specific materials that it regulates as explosives that DOT regulates as a different class of

[17] Paragraph (b) of Section 1012 describes hazardous materials as any material defined as a hazardous material by the Secretary of Transportation and any chemical or biological material or agency determined by the Secretary of Health and Human Services or the Attorney General as being a threat to the national security of the U.S.

hazardous materials. Further, ATF regulates all mixtures that contain any of the materials it lists as explosives. ATF does not define a lower limit at which a mixture would cease to meet the definition for an explosive. The DOT definition, by contrast, depends on test results of materials packaged for shipment to determine whether a material should be classed as an explosive under the HMR. Thus, if a mixture is tested and does not exhibit explosive properties, it would not be classed as an explosive under the HMR, even though the mixture might contain a material that, by itself, would be classed as an explosive.

Moreover, the ATF explosives list includes dinitrophenol, guncotton, nitrostarch, sodium picramate, and several other materials that DOT regulates as a different class of hazardous materials when combined with water. When combined with water, these materials may not exhibit explosive properties and, thus, do not meet the DOT definition for an explosive. DOT regulates these materials, with specified percentages of water, as Division 4.1 (flammable solid) materials.

ATF regulates ammonium nitrate-fuel oil mixtures and ammonium nitrate explosive mixtures as explosive materials. Under the HMR, ammonium nitrate is classed as a Division 1.1 explosive, and ammonium nitrate-fuel oil mixtures are classed as Division 1.5 explosives. However, some mixtures that include ammonium nitrate among their components are classed as Division 5.1 (solid oxidizer) materials because they require further processing before they can be used to produce a practical explosion. Again, the difference exists because the DOT classification criteria depend on testing to determine whether a material exhibits explosive properties; if a material is tested and found not to meet the DOT definition, it is not regulated as an explosive for purposes of the HMR.

A major difference between the ATF and DOT requirements for regulating explosives is how the agencies treat military and government shipments. In accordance with 18 U.S.C. 845, ATF generally does not regulate explosives being delivered to any agency of the United States or any state or political subdivision thereof; or explosives manufactured under the regulation of the military department of the United States or transported on behalf of the military department of the United States or transported to arsenals, navy yards, depots, or other establishments owned by, or operated on behalf of, the United States. Under the HMR, by contrast, government and military shipments of explosives are regulated if such shipments are transported by commercial carriers rather than government or military personnel.

For purposes of SEA, DOT compared the list of materials that ATF regulates as explosives with the definitions for different classes of hazardous materials regulated under the HMR and assessed the security risks associated with the transportation of such materials. DOT concluded that a mixture that does not meet the definition of a Class 1 material under the HMR generally does not pose a sufficient security risk when transported in commerce to warrant detailed employee background checks at this time. Such mixtures may meet the definition of a different hazardous class, in which case they are subject to applicable security requirements in the regulations of RSPA, FMCSA, or USCG regulations, or they may not meet the definition of any hazard class, in which case they are not regulated as hazardous materials under the HMR.

DOT further concluded that a material regulated as an explosive by ATF but as a different class of hazardous material under the HMR, such as certain wetted materials and ammonium nitrate mixtures, generally will be subject to applicable security requirements in HM–232 (which is the final rule issued by RSPA on March 25, 2003 at 65 FR 14510) or in TSA, FMCSA, or USCG regulations, as incorporated into the hazardous materials regulations in the RSPA rule that accompanies this rule. If required to be placarded, shipments of such materials will be subject to the background check requirements mandated in this rule when transported by motor carrier and to the security plan requirements in HM–232. When shipped in amounts that do not require placarding, such shipments do not pose a security threat when transported in commerce sufficient to warrant detailed employee background check requirements at this time.

Generally, DOT determined that the placarding thresholds established in the HMR for explosives shipments represent explosives that pose the most significant security threat when transported in commerce. Explosives in the following quantities must be placarded in accordance with HMR requirements:

(1) Any quantity of Division 1.1, 1.2, or 1.3 explosives;

(2) More than 454 kg of Division 1.4, 1.5, or 1.6 explosives.

Examples of Division 1.4 explosives include toy caps, signal devices, flares, and distress signals. In quantities less than 454 kg, such explosives generally do not present a significant security threat involving their use during transportation for a criminal or terrorist act. Similarly, Division 1.5 and 1.6 explosives are sufficiently insensitive that, in amounts below 454 kg, they generally do not present a significant security threat.

Although there are differences between the ATF and DOT definition of explosives, TSA and DOT believe that any gaps between the definitions which cover either the type of explosive or the amount of explosive in transportation do not give rise to security concerns that warrant additional regulation at this time. The security and safety regimes established in this rule and the FMCSA and RSPA regulatory programs address the transportation of explosives by persons posing a security threat.

It is important to note, however, that TSA continues to analyze explosive, radioactive, organic, flammable, and corrosive materials, and medical and hazardous wastes in transportation to determine whether additional security procedures are necessary to protect the public, infrastructure and the transportation system. TSA anticipates that, after the completion of risk analyses, additional regulations will evolve that are narrowly tailored to address specific products, processes, and threat information, regardless of whether they must be placarded in transportation. In addition, TSA is considering whether a larger group of individuals should be required to undergo fingerprint-based criminal history background checks and whether a different security check would effectively capture the individuals who are bent on using the transportation network to commit terrorist acts.

Based on the foregoing, the TSA, FMCSA, and RSPA rules now regulate the security threat posed by the transportation of explosives by commercial motor vehicle incident to and in connection with the commercial transportation of explosives, and therefore the prohibitions of 18 U.S.C. 842(i) do not apply to persons while they are engaged in such transportation.

Summary of the Interim Final Rule

This interim final rule implements section 1012 of the USA PATRIOT Act. The rule establishes security threat assessment standards for determining whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a CDL. TSA will determine that an individual poses a security threat if he or she: (1) Is an alien (unless he or she is a lawful permanent resident) or a U.S. citizen who has renounced his or her U.S.

citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in military or civilian court for certain felonies; (4) has been adjudicated as a mental defective or committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases. The rule establishes conditions under which an individual who has been determined to be a security risk may appeal the determination, and procedures TSA will follow when considering an appeal. The rule also provides a waiver process for those individuals who otherwise cannot obtain a hazardous materials endorsement because they have a conviction for a disqualifying felony, or were adjudicated as a mental defective or committed to a mental institution.

The primary basis for determining whether an individual has committed a disqualifying criminal offense is collecting fingerprints and submitting them to the Federal Bureau of Investigation (FBI) for a criminal history records check. The process of collecting, submitting, and analyzing fingerprints is resource intensive and complex. Under this rule, TSA and the States will consult closely to determine the most efficient and cost-effective means of collecting fingerprints without unduly burdening State resources. TSA must balance the critical need to evaluate and ensure the security of hazardous materials in transportation with the practical need to develop an effective, efficient infrastructure that will support security threat assessments, including collection and analysis of fingerprints, of approximately 3.5 million commercial truck drivers in a very short time period.

TSA will work closely with the Department of Justice (DOJ), the States, and the industry to develop an effective, efficient fingerprinting process. Generally, TSA will provide guidance on where individuals will report to submit fingerprints. This may include local law enforcement offices, State motor vehicle offices, or private collection companies that have been certified to capture fingerprints. The fee for submitting fingerprints to the FBI for a criminal history records check will be collected when the prints are captured and then forwarded to the FBI. The FBI will send the fingerprint submission results to TSA, and TSA will notify the appropriate State if the background records check does not reveal a disqualifying offense. However, if the search discloses an adverse report, TSA will investigate it to determine if the record accurately corresponds to the applicant, if an arrest subsequently resulted in a conviction, or any other problems the criminal record reveals. TSA will notify the individual and/or the State of the final outcome once this investigation is complete.

For purposes of this rule, TSA provides cost estimates based on the fees that are known (such as the fee the FBI charges to process each set of fingerprints) and our experience with background records checks in the aviation sector. However, there may be challenges to completing this process within the cost estimates provided due to differences in State records, the degree to which a State has electronic records, and the difficulties of locating individual CDL holders. Therefore, the costs set out in the rule are subject to change, but most likely will diminish over time.

In developing these regulations, TSA has and will continue to coordinate with the National Crime Prevention and Privacy Compact Council (Compact Council). The Compact Council was established pursuant to the 1998 National Crime Prevention and Privacy Compact (Compact) (42 U.S.C. 14616). The Compact establishes legal criteria governing criminal history record checks for non-criminal justice purposes.

The Compact Council is composed of 15 members, appointed by the Attorney General, and has the authority to promulgate rules and procedures governing the use of the Federal-State criminal history records system for noncriminal justice purposes. The Council's oversight seeks to ensure uniform application of the statutory requirements, while permitting each State to develop its own dissemination policy within its borders. As a general rule, the Compact requires the submission of fingerprints for purposes of gaining access to the criminal history databases for noncriminal justice purposes. Due to the time it will take to develop a fingerprint collection infrastructure for 3.5 million hazardous materials endorsement holders, the Compact Council has agreed that TSA may obtain criminal history information based on names and other biographical data, so long as fingerprints are subsequently gathered and submitted. TSA will report to the Council periodically to ensure compliance with the Compact.

To ensure the development of an effective infrastructure for conducting security threat assessments, TSA solicits comments and ideas from the States, trucking industry associations, labor organizations, and other interested parties. TSA must use a system that is flexible enough to accommodate all of the unique characteristics of the State processes, and the mobile nature of the workforce, and that is cost-effective for the drivers, employers, and governmental agencies.

The background check process for individuals applying for or holding hazardous materials endorsements will proceed as follows:

- As of 120 days following publication of the rule, any CDL holder who does not meet the security threat assessment standards prescribed in this rule is not authorized to hold or obtain a hazardous materials endorsement.
- Following publication of the rule, TSA will begin to conduct security threat assessments on individuals who currently hold hazardous materials endorsements, as well as drivers applying for new or transfer endorsements. This assessment will make use of names and biographical data contained in the Commercial Drivers License Information System (CDLIS). Some assessments will include entering names in the National Crime Information Center (NCIC) database, the Interstate Identification Index (III), and other databases, such as terrorism watch lists. If the name and biographical data search discloses that an individual does not meet the security threat assessment standards, TSA will notify the individual and the State in which he or she holds or is applying for a hazardous materials endorsements. If the individual wishes to dispute the results of the search, he or she will submit fingerprints or court records, in a manner prescribed by TSA, to verify or invalidate the individual's identity and criminal background, and the results of the search. If the individual does not contest the initial result or is not able to correct the record, TSA will notify the State to revoke or deny the endorsement.
- If the name-based background check discloses that a driver is the subject of an outstanding felony want or warrant, TSA will ensure that the appropriate law enforcement agency is notified.
- Individuals whose name-based check indicates that they meet the security threat assessment standards must submit fingerprints between 180 days and five years from the effective date of the rule, when applying for a new, renewed, or transferred hazardous materials endorsement. A State may require fingerprint submission prior to the expiration of five years, or on a more frequent basis than once every five years.
- Existing hazardous materials endorsement holders may be subject to fingerprint-based checks prior to

renewal of their endorsements in a manner prescribed by TSA.

• After 180 days following the effective date of the rule, no State may issue, renew, or transfer a hazardous materials endorsement unless TSA has notified the State that the individual holding or applying for the endorsement does not pose a security threat.

Each State must notify individuals holding a hazardous materials endorsement that he or she will be subject to a security threat assessment, at least 180 days before the endorsement expires. The notice must also inform these individuals that they may initiate the security threat assessment required by this rule at any time after receiving the notice, but no later than 90 days before the expiration date of the endorsement. For the first 180 days the State requirements of this rule are in effect, a State may extend the expiration date of a hazardous materials endorsement, until TSA has notified the State that an individual does or does not pose a security threat. TSA requests comments from the States and industry on the process outlined above. TSA understands that each State has a unique registration system in place, and that there may be significant challenges to collecting fingerprints of all CDL drivers with hazardous materials endorsements. TSA will continue to work closely with all affected entities to develop an efficient and effective system.

Section-By-Section Analysis

PART 1570—LAND TRANSPORTATION SECURITY: GENERAL RULES

Section 1570.1 Scope

This part applies to any person engaged in activities subject to the requirements of this part.

Section 1570.3 Fraud and Intentional Falsification of Records

This section prohibits persons from making, or causing to be made any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with this subchapter, or exercise any privileges under this subchapter. Also, this section prohibits any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access media, or identification media issued under this subchapter or pursuant to standards in this subchapter.

TSA is adding these prohibitions to prevent persons from providing false information on the application for any authorization for which TSA conducts a security threat assessment, including a hazardous materials endorsement for a CDL. This section is consistent with the prohibition on fraud and intentional falsification in aviation security.[18]

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR LAND TRANSPORTATION SECURITY

Subpart A—Requirements to Undergo Security Threat Assessments

Section 1572.3 Terms Used in This Part

This section provides definitions for several terms used in Part 1572. These definitions are relevant only to requirements in this part.

''Alien'' means a person not a citizen of the U.S. This definition is consistent with the definition of that term provided in the USA PATRIOT Act, which defines ''alien'' by referring to the definition given that term in section 101(a)(3) of the Immigration and Nationality Act (INA). Section 101(a)(3) of the INA defines ''alien'' as any person not a citizen or national of the U.S.[19]

''Alien registration number'' means the number issued by the DHS to an individual when he or she becomes a lawful permanent resident.

The terms ''commercial drivers license,'' ''endorsement,'' and ''hazardous materials'' are used as defined in FMCSA's regulations at 49 CFR 383.5

A ''hazardous material'' is defined in FMCSA's rule as any material that: (1) In accordance with Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), has been determined to pose an unreasonable risk to health, safety, and property when transported in commerce and that is required to be placarded under subpart F of part 172 of the Hazardous Materials Regulations (49 CFR parts 171–180); or (2) any quantity of any material listed as a select agent or toxin by CDC in 42 CFR part 73.

DOT evaluates materials to determine whether their respective characteristics, properties, and quantities in transportation merit special marking, storage, and handling procedures. DOT has determined that non-placarded shipments do not present a sufficient security risk in transportation to warrant application at this time of the TSA background check requirements to persons who possess or transport these materials, including persons subject to 18 U.S.C. 842(i). Therefore, for purposes of this rule, DOT and TSA believe it is the appropriate standard to apply. This rule should apply only to the hazardous materials endorsements that are referenced in the FMCSA and RSPA regulations.

''Convicted'' means any plea of guilty or *nolo contendere*, or any finding of guilt. Because this rule must be consistent nationally, TSA will apply Federal law to determine whether a conviction has occurred and whether post-conviction remedies should be recognized, as TSA currently does in aviation. Also, it is important to note that for purposes of this rule, a conviction occurs when an individual is convicted of a criminal offense, receives probation, completes the probated sentence, and the individual is then discharged from probation unless the discharge is accompanied by an expungement of the underlying conviction that does not place any restriction on the individual. In most States, completion of probation does not nullify the existence of the underlying conviction.

''Final Notification of Threat Assessment'' means a final determination that an individual does not meet the standards required to hold or obtain a hazardous materials endorsement. A Final Notification may not be administratively appealed.

''Incarceration'' means confinement to a jail, half-way house, treatment facility, or other institution, on a full or part-time basis pursuant to a sentence imposed due to a conviction. This definition is taken from a statutory definition of ''imprisoned'' in 22 U.S.C. 2714, which relates to denial of passports due to certain drug offense convictions.

''Initial Notification of Threat Assessment'' means an initial administrative determination by TSA that an individual poses a security threat that warrants denial of the authorization to transport hazardous materials. An Initial Notification may be administratively appealed.

''Lawful permanent resident'' means an individual who has been lawfully admitted for permanent residence to the United States, as defined in 8 U.S.C. 1101. In the statute, ''lawfully admitted for permanent residence'' means ''the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.''

''Mental institution'' means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including

[18] 49 CFR 1540.103

[19] 8 U.S.C. 1101(a). Nationals may not obtain a hazardous materials endorsement under FMCSA rules.

a psychiatric ward in a general hospital. This definition is taken from standards concerning individuals with a mental disability, which ATF promulgated at 27 CFR 478.11.

''Notification of No Security Threat'' is an administrative determination by TSA that an individual does not pose a security threat that merits denial of the authorization to transport hazardous materials.

''Severe transportation security incident'' means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. This definition is taken from the MTSA (46 U.S.C. 70101).

''State'' means a State of the United States and the District of Columbia. This definition is taken from The Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301(14), which created the CDL program.

Section 1572.5 Security Threat Assessment for Commercial Drivers Licenses with a Hazardous Materials Endorsement

This section applies to State agencies responsible for issuing a hazardous materials endorsement for a CDL, and applicants for such endorsements. However, note that under FMCSA regulations (49 CFR 383.3(c)), individuals who operate commercial motor vehicles for military purposes (essentially uniformed members of the U.S. military) are exempt from CDL requirements. This rule does not apply to individuals exempt under 49 CFR 383.3(c).

Paragraph (b) states that within 120 days of the effective date of the rule, any CDL holder who does not meet the standards listed in this paragraph is not authorized to transport hazardous materials.

This section requires holders of a hazardous materials endorsement to relinquish the endorsement if he or she does not meet the standards set forth in § 1572.5(d). Also, this section requires the individual in possession of a hazardous materials endorsement, who is prohibited from holding the endorsement as a result of the requirements of paragraph (b), to surrender the endorsement to the issuing State [20]. Both of these requirements become enforceable as of 120 days from the effective date of the rule. TSA will begin to do security threat assessments on hazardous material drivers shortly after this rule is published. However, the rule places a self-disclosure requirement on affected drivers, regardless of when TSA has completed an assessment on each driver. In addition, each individual with a hazardous materials endorsement has an ongoing responsibility to report if he or she is convicted of, wanted or under indictment in any jurisdiction for, or found not guilty by reason of insanity of, a disqualifying criminal offense to the issuing State entity, within 24 hours of the conviction, indictment, or finding. An individual with a hazardous materials endorsement also has an ongoing responsibility to report to the issuing State entity if he or she is adjudicated as a mental defective or committed to a mental institution, within 24 hours of the adjudication or commitment. Finally, an individual has an ongoing responsibility to report to the issuing State entity if he or she renounces his or her U.S. citizenship. The driver must surrender the hazardous materials endorsement to the issuing State within 24 hours of the conviction, finding, adjudication, commitment, or renunciation.

It is important to note here that any individual, other than an individual who does not meet the standards for a security threat assessment under §§ 1572.105 (Citizenship status) and 1572.107 (Other analyses) may apply for a waiver of these standards in order to obtain or hold a hazardous materials endorsement. Section 1572.143 of the rule describes the process and criteria for obtaining a waiver and is discussed in greater detail below. However, there is no restriction on when an individual may submit a waiver request. Therefore, upon publication of this rule, an individual with a disqualifying criminal offense or who was previously adjudicated as a mental defective or committed to a mental institution may apply for a waiver within the 120-day period set in paragraph (b). If TSA grants the waiver, the individual may continue to lawfully hold the hazardous materials endorsement, and, at the expiration of the 120 days following publication of the rule, would not be required to surrender the endorsement.

As noted above, TSA will begin conducting name checks on hazardous materials endorsement holders upon the effective date of the rule. If a name check of an individual indicates that he or she does not meet the security threat assessment standards, TSA will inform the State that issued the endorsement, and the State will be required to revoke the endorsement. Paragraph (b)(2) states that, for the first 180 days the rule is in effect, the individual may submit fingerprints to TSA, in a form and manner specified by TSA, when a State revokes his or her hazardous materials endorsement in response to a TSA notification that the individual poses a security threat. TSA will use the individual's fingerprints to conduct additional checks and determine if the notification was made in error.

After 180 days, each individual must submit fingerprints in a form and manner specified by TSA when applying to a State to issue, renew,[21] or transfer a hazardous materials endorsement for a CDL; and at other times as specified by TSA. A State may require an applicant or a holder of a hazardous materials endorsement to submit fingerprints more frequently than once every five years. When submitting fingerprints under this section, the individual or his or her employer will be responsible for any fee that may be charged by the persons or entities collecting and processing the fingerprints. These fingerprinting fees will be collected when the fingerprint is captured. There are additional fees associated with accessing criminal and other pertinent databases over which TSA has no control. TSA will issue guidance to all affected individuals explaining the pertinent fee and process to forward it to the appropriate party after consulting with the States and other Federal agencies involved.

Paragraph (c) of this section provides that, for the first 180 days after the effective date of the rule, each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the security threat assessment standards. If TSA makes such a notification, the agency will also notify the individual. The individual then may submit his or her fingerprints if he or she believes the determination was made in error. TSA will use the fingerprints to conduct additional checks.

After 180 days following the effective date of the rule, no State may renew, issue, or transfer a hazardous materials endorsement unless TSA has notified the State that the individual does not pose a security threat. The State must notify each affected individual that he or she will be subject to a background

[20] It is important to note that section 1012 of the USA PATRIOT Act authorizes TSA to impose requirements on State CDL programs, but not individual CDL holders. However, TSA has authority to impose requirements on transportation workers, including threat assessments and fingerprint-based background checks under ATSA. *See* 49 U.S.C. 114(f).

[21] Until now, each State has determined the interval, if any, for renewing a hazardous materials endorsement. The companion rule that FMCSA is publishing requires States to adopt a renewal term of not more than 5 years for all hazardous materials endorsements.

check in order to renew a hazardous materials endorsement, at least 180 days prior to the expiration of the endorsement. Also, the State must inform the individual that he or she may initiate the security assessment at any time, but no later than 90 days before the expiration date. TSA will put forth every effort to prevent any CDL holder from losing a hazardous materials endorsement as a result of insufficient time to complete the background check. As long as the drivers complete the application and submit fingerprints at least 90 days prior to the expiration of his or her endorsement, TSA and the State should be able to complete the review process and renew the endorsement, where appropriate.

Paragraph (c)(3) provides that between six and 12 months after the effective date of the rule, if TSA is conducting a security threat assessment on an individual applying to renew a hazardous materials endorsement, the State may extend the expiration of a hazardous materials endorsement until TSA informs the State of TSA's final determination that the individual does not pose a security threat. If the individual is applying for a new endorsement, the State may not issue the endorsement until TSA determines the individual does not pose a security threat. This time period is necessary to ensure that TSA will have sufficient time to perform the security threat assessment.

Paragraph (d) of § 1572.5 establishes the standards TSA applies to determine whether an individual poses a security threat that warrants denial of a hazardous materials endorsement. The individual does not pose a security threat if he or she meets the citizenship requirements set forth in § 1572.105; does not have a disqualifying criminal offense described in § 1572.103; has not been adjudicated as a mental defective as prescribed in section § 1572.109; and after an analysis of other databases described in § 1572.107, TSA determines that the individual does not pose a security threat. This paragraph also states that the security threat assessment will be based on a combination of the individual's fingerprints, name, and other identifying information.

Paragraph 1572.5(d)(3) states that TSA will not issue a Notification of No Security Threat and will notify the FMCSA and the pertinent State if an applicant's criminal history records indicate a violation of 49 CFR 383.51. Section 383.51 of the FMCSA regulations prohibit an individual from driving a commercial motor vehicle for prescribed time periods for offenses such as driving under the influence, leaving the scene of an accident, and a felony involving the use of a commercial vehicle. This information is pertinent to whether an individual is fit to hold or obtain a hazardous materials endorsement, and should be shared with the State and FMCSA.

Paragraph (d)(4) provides that TSA may, under certain circumstances, direct a State to immediately revoke an individual's hazardous materials endorsement. If TSA determines that, in conducting the security threat assessment, it is necessary to immediately revoke the individual's hazardous materials endorsement, TSA and the State must have the authority to remove the individual from hazardous materials service. This scenario will not occur frequently, and only where sufficient legal and factual grounds exist that warrant immediate action. The individual may appeal the revocation following surrender of the endorsement, pursuant to the procedures set forth in § 1572.141(i).

Paragraph 1572.5(e) specifies the information each State application must request, and each applicant must complete when applying for a new, renewal, or transfer hazardous materials endorsement.[22] This information includes the individual's name; current residential address, and all other residential addresses from the previous seven years; date of birth; social security number, or alien registration number, if the applicant is an alien; gender; city of birth, State and country of birth; and citizenship. This information will be used to verify the individual's identity and determine whether they meet the security threat assessment standards.

Other information provided in the application process includes: (1) A list of disqualifying crimes specified in 49 CFR 1572.103; (2) a certification that the applicant does not have a disqualifying criminal offense, as described in 49 CFR 1572.103; (3) a certification that the individual has not been adjudicated to have a mental defect or committed to a mental institution; (4) a statement informing the applicant that Federal regulations impose a continuing obligation on the applicant to disclose to the State if the applicant has committed a disqualifying criminal offense while he or she has a hazardous materials endorsement; (5) a statement concerning any military service the applicant may have completed and the kind of discharge he or she received; (6) statements required by the Privacy Act regarding the authority for collecting information from the individual, the purpose of collecting the information, and routine uses of the information; and (7) a statement that the information provided by the applicant is true, complete, and correct, and that the applicant understands that a knowing and willful false statement can be punished by fine or imprisonment, or both, and may be grounds for denial of a hazardous materials endorsement. The State also must advise the individual that TSA will provide a copy of the individual's criminal history record to him or her, if he or she requests the record in writing. The applicant must sign and date the application.

Paragraph (f) of this section states that if the criminal history records check discloses an arrest for a disqualifying crime listed in § 1572.103, but does not indicate a disposition, TSA follows the resolution procedures set forth in § 1572.103, which are discussed further below.

Paragraph (g) of this section describes when TSA must provide notification of the determination concerning the security threat assessment. Paragraph (g)(2) states that TSA will notify the individual that TSA has made an initial determination that the individual poses a security threat. The individual may appeal this initial determination, pursuant to the procedures listed in § 1572.141, or request a waiver, pursuant to the procedures listed in § 1572.143. Following resolution of any appeal or waiver, TSA will issue either a final notification of threat assessment or a determination that the individual does not pose a security threat. This final determination is not subject to appeal. However, a person may apply for a waiver following issuance of the final determination under paragraph (g)(4).

Paragraph (g)(5) describes the State notification requirements. Within 15 days of the receipt of the Notification of No Security Threat, Final Notification of Threat Assessment, or grant of a waiver, the State must: (1) Update the individual's permanent record with the results of the threat assessment, issuance or denial of the endorsement, and the expiration date of the endorsement, if one is issued; (2) notify the Commercial Drivers License Information System operator of the results; and (3) revoke or deny the individual's hazardous materials endorsement, if TSA serves the State with a Final Notification of Threat Assessment; or (4) grant or renew the individual's hazardous materials endorsement, if TSA serves the State

[22] TSA notes that ''issuing'' a hazardous materials endorsement includes instances in which a State upgrades a current CDL to include a hazardous materials endorsement.

with a Notification of No Security Threat or grant of a waiver, and the individual is otherwise qualified. TSA does not require the State to take a specific action if TSA serves an Initial Notification of Threat Assessment for an applicant or holder of a hazardous materials endorsement in the State. TSA is aware that a background records check may incorrectly identify an individual as a convicted felon, or within another prohibited category. Individuals are able to correct inaccurate records and receive clearance to obtain or renew a hazardous materials endorsement. For this reason, TSA does not wish to require revocation of the hazardous materials endorsement based on an initial review, but believes the State should be aware that the individual may be within a prohibited category under this rule. The State may take whatever action it deems appropriate or do nothing unless and until TSA has issued its final determination.

Subpart B—Standards, Appeals, and Waivers for Security Threat Assessments

Section 1572.101 Scope and Definitions

This subpart applies to individuals who have or are applying for a hazardous materials endorsement for a CDL.

The terms below have the following definitions in this subpart.

''Associate Administrator/Chief Operating Officer'' means the Associate Administrator who is also the Chief Operating Officer of TSA, or his or her designee.

''Authorization'' means any credential or endorsement for which TSA conducts a security threat assessment under this part, including a hazardous materials endorsement for a CDL.

''Date of service'' has the same meaning as the definition of that term in the Rules of Practice in Transportation Security Administration Civil Penalty Actions and TSA's Investigative and Enforcement Procedures.[23] TSA notes that, while § 1503.211(e) of the Rules of Practice also provides for additional time for a party to act after service by mail, this rule incorporates additional time in the stated timeframes, and no additional time will be added for that purpose under this rule. The rule also provides that the date of service for an electronic-mail is the date in the electronic-mail indicating when it was sent.

''Day'' means calendar day.

[23] *See* 49 CFR 1503.211(d).

Section 1572.103 Disqualifying Criminal Offenses

Congress did not specify in the USA PATRIOT Act which criminal offenses TSA should use to determine whether a person poses a security risk warranting denial of a hazardous materials endorsement. TSA considered the crimes listed in 49 U.S.C. 44936, which include misdemeanors and felonies, for individuals who have unescorted access to secured areas of airports or aircraft, security screeners, and other aviation personnel.

This rule includes only felonies, which constitute the most serious crimes. The list of disqualifying crimes address the use of weapons of mass destruction, financial assistance to terrorists, and general acts of terrorism, which are codified in 18 U.S.C. Chapter 113B. In addition, the list includes sedition, kidnapping, identity-fraud, improper shipment of a hazardous material; immigration violations, and a crime involving a severe transportation security incident, such as air piracy or train wrecking.

The list also includes crimes that demonstrate the individual is willing to commit violent acts against others for personal reasons, such as murder and robbery. TSA's standards are designed to prevent persons from committing violence against others in transportation. That an individual has committed criminal violence in the past is inconsistent with the need to ensure that drivers of hazardous materials will not misuse the materials. The list also includes crimes related to transporting or transferring items in an illegal manner, or with others to commit criminal acts. TSA is concerned with the possibility that such an individual could be involved intentionally, or may be used unwittingly by others with malicious intent, in transporting items that could be used to commit terrorist acts. A crime involving a severe transportation security incident could include such things as aircraft piracy, or acts of violence against trains or other transportation systems.

The listed offenses are considered grounds for disqualification whether they were prosecuted by civilian or military authorities. If these individuals have been convicted within the preceding seven years, or incarcerated within the preceding five years, of a criminal offense listed in § 1572.103, they are disqualified.

This rule cannot possibly list all of the offenses or other information that may be relevant to determining whether an individual poses a security threat that merits denial of a hazardous materials endorsement. Therefore, under § 1572.107, TSA may consider other criminal offenses and information not listed in section 1572.103, if they indicate the individual poses a security threat. On the other hand, even if an individual has a disqualifying criminal offense, but believes that under their particular circumstances they should not be considered to pose a security threat, they may request a waiver under § 1572.143.

Under paragraph (d) of this section, certain listed disqualifying criminal offenses will not be subject to the seven and five year look back periods. These offenses are the terrorism crimes listed in 18 U.S.C. Chapter 113 B; espionage; sedition; treason; arson; improper transportation of a hazardous material; unlawful possession use, sale, distribution, or manufacture of an explosive; crimes involving a severe transportation security incident; and conspiracies or attempts to commit these crimes, where applicable. TSA believes that an individual who has one of these disqualifying criminal offenses poses an ongoing security threat, and should not be allowed to transport hazardous materials.

TSA invites comment from all interested parties concerning this list of disqualifying criminal offenses. TSA must balance its responsibility to ensure the security of hazardous materials transportation against the knowledge that individuals may participate in criminal acts and subsequently become valuable members of the workforce. TSA wishes to minimize the adverse impact this rule may have on individuals who have committed criminal offenses and served their sentences, without compromising the security of hazardous materials in transportation. For this reason, TSA has determined that only crimes committed in the seven years prior to issuance or renewal of the hazardous materials endorsement and incarcerations that ended five years prior to issuance or renewal should disqualify an individual. This is consistent with the requirements in MTSA.

Under paragraph (c), TSA will notify an individual when his or her CHRC discloses an arrest for any disqualifying crime without indicating a disposition. The individual then must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense within 30 days after the date TSA notifies the individual. If TSA does not receive such proof in 30 days, TSA may serve the individual with an Initial Notification of Threat Assessment.

Section 1572.105 Citizenship Status

The USA PATRIOT Act and SEA require a check of the relevant databases to determine the status of aliens under U.S. immigration laws. This rule requires an individual applying for a hazardous materials endorsement to be either a U.S. citizen or a lawful permanent resident of the U.S. As noted above, the SEA does not prohibit lawful permanent residents and other narrow categories of aliens from transporting explosives.[24] However, FMCSA's CDL regulations require a CDL holder to have a ''State of domicile,'' which is defined as ''that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.''[25] Lawful permanent residents of the U.S. are the only aliens who have a State of domicile under this definition. Thus, they are the only aliens who are permitted to have a CDL. In the case of an individual who is a lawful permanent resident, TSA will check relevant databases to determine the status of the individual under the immigration laws of the U.S.

To determine an individual's citizenship status, TSA may check the relevant immigration databases, and may perform other checks, including verifying the validity of the individual's Social Security Number. We note that § 383.71(a)(9) of the companion FMCSA rule requires drivers to provide proof of citizenship or alien status when applying for a hazardous materials endorsement.

Section 1572.107 Other Analyses

The USA PATRIOT Act also requires that background checks under section 1012 include a check of relevant international databases through Interpol-U.S. National Central Bureau, or other appropriate means. Therefore, TSA will check these international databases when appropriate. In addition, TSA will check other databases that include information on terrorists, fugitives from justice, renunciants, and individuals who have been declared mental defectives, and, where appropriate, may also check databases that assist in confirming an individual's identity. This rule provides that TSA will check the following databases, and conduct a security threat analysis, before determining that an individual does not pose a security threat: (1) Interpol and other international databases; (2) watchlists; and (3) other databases relevant to determining whether an individual poses a security threat or that confirm an individual's identity. TSA is not initiating any independent investigation of a CDL holder's activities and affiliations and has no plans to engage in such reviews.

Section 1572.109 Mental Defects

The SEA prohibits individuals who have been adjudicated as having a mental defect from transporting explosives. This rule implements that portion of the SEA, by determining that any person who has been determined to be a mental defective does not meet the standards for a security threat assessment. This section adopts terms and standards concerning individuals with mental disabilities that ATF promulgated to implement the Brady Handgun Violence Prevention Act.[26] In the notice proposing these standards, ATF stated:

> The legislative history of the GCA [Gun Control Act of 1968] makes it clear that a formal adjudication or commitment by a court, board, commission or similar legal authority is necessary before firearms disabilities are incurred. H.R. Rep. 1956, 90th Cong., 2d Sess. 30 (1968). The plain language of the statute makes it clear that a formal commitment, for any reason, *e.g.*, drug use, gives rise to firearms disabilities. However, the mere presence of a person in a mental institution for observation or a voluntary commitment to a mental hospital does not result in firearms disabilities.[27]

ATF also cited several cases in which courts held that the GCA was designed to prohibit the receipt and possession of firearms by individuals who are potentially dangerous, including individuals who are mentally incompetent or afflicted with a mental illness, and individuals found not guilty by reason of insanity in a criminal case.[28] Finally, ATF added to the definition of ''adjudicated as mental defective'' an element from the Department of Veterans Affairs definition of ''mental incompetent''—an individual who because of injury or disease lacks the mental capacity to contract or manage his or her own affairs.[29]

An individual has a mental defect, for purposes of this rule, if he or she has been committed to a mental institution or has been adjudicated as a mental defective. An individual is adjudicated as a mental defective if a court or other appropriate authority determines that the individual is a danger to him or herself, or lacks the mental capacity to manage his or her affairs. An individual is ''committed to an institution'' if formally committed by a court; this term does not refer to voluntary admissions to a mental institution or hospital.

Section 1572.141 Notification of Threat Assessment and Appeal

In this rule TSA is establishing an appeals process for individuals found to be ineligible for an authorization. This section provides that if, after conducting the security threat assessment, TSA determines that an individual poses a security threat warranting denial of the hazardous materials endorsement, TSA will provide the individual an Initial Notification of Threat Assessment. The Initial Notification will include: (1) A statement that TSA has determined that the individual poses a security threat, (2) the bases for the determination, and (3) information about the process for appealing the determination.

TSA will provide an individual, upon request, an opportunity for the Associate Administrator/Chief Operating Officer of TSA, or his or her designee, to review the bases of an Initial Notification of Threat Assessment. This review is initiated through the individual appealing the Initial Notification.

As set forth in paragraph (c), an individual may appeal an Initial Notification only if he or she asserts that he or she satisfies the standards for the security threat assessment. For example, if the Initial Notification was based on a conviction for a disqualifying crime, the individual may provide TSA with evidence that the conviction was pardoned, expunged, or overturned on appeal. Evidence of such actions may nullify a conviction for a disqualifying crime, but only if no restrictions are imposed on the individual based on the underlying conviction. If, for example, an individual received an executive pardon for a conviction for a disqualifying crime, but the pardon prohibits the individual from possessing a firearm, or imposes any other restrictions, the pardon will not nullify the conviction.

Pursuant to paragraph (d), an individual may initiate an appeal by providing TSA with a written request for the releasable materials upon which the Initial Notification was based, or by serving TSA with his or her written reply to the Initial Notification.

If an individual wishes to receive copies of the releasable material upon which the Initial Notification was based, he or she must serve TSA with a written request not later than 15 days after the date of service of the Initial Notification.

[24] 18 U.S.C. 842(i)(5).

[25] 49 CFR 383.5.

[26] Pub. L. 103–159, November 30, 1993, 107 Stat. 1536, amending the Gun Control Act of 1968. *See* 27 CFR 478.11.

[27] 61 FR 47095, September 6, 1996.

[28] *Id.*

[29] *Id.*

TSA will respond to this request not later than 30 days after TSA is served with the individual's request. TSA will not provide any classified information, as defined in Executive Order 12968, or any other information or material protected from disclosure by law, in its response.

If an individual wishes to reply to the Initial Notification, he or she must provide TSA with a written reply not later than 15 days after the date of service of the Initial Notification or the date of service of TSA's response to the individual's request for materials, if the individual made such a request. In an individual's reply, TSA will consider only material that is relevant to whether the individual satisfies the standards for the security threat assessment.

Under paragraph (d)(3) of this section, an individual has the opportunity to correct his or her criminal history record. If an individual's record discloses disqualifying information, TSA will notify the individual of the adverse information and provide a copy of the record, if requested. If the individual wishes to correct the inaccurate information, he or she must provide written proof that the arrest did not result in a disqualifying criminal offense. The individual may contact the local jurisdiction responsible for the information, the FBI, or any other relevant agency to complete or correct the information contained in his or her record. The individual must provide TSA with the revised FBI or other agency record, or a certified true copy of the information from the appropriate court, before TSA determines that the individual satisfies the standards for the security threat assessment.

In considering an appeal, the TSA Associate Administrator/Chief Operating Officer reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, and any other materials or information available to TSA. The Associate Administrator/Chief Operating Officer may affirm the Initial Notification by concluding that an individual poses a security threat. In this case, as set forth in paragraph (e), TSA will serve upon the individual a Final Notification of Threat Assessment. The Final Notification includes a statement that the Associate Administrator/Chief Operating Officer has reviewed the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him and has determined that the individual poses a security threat. There is no administrative appeal of the Associate Administrator/Chief Operating Officer's decision. However, as explained below, the individual may apply for a waiver. For purposes of judicial review, the Final Notification of Threat Assessment constitutes a final TSA order.

Paragraph (e)(3) sets forth the procedures TSA will follow if, upon review, the Associate Administrator/Chief Operating Officer does not determine that the individual poses a security threat. TSA serves a Withdrawal of the Initial Notification on the individual and provides a notice approving the hazardous materials endorsement to the State in which the individual applied for the endorsement.

If the applicant does not initiate an appeal or waiver request within 30 days of service of the Initial Notification, TSA issues a Final Notification of Threat Assessment. Unless the individual applies for and obtains a waiver, issuance of the Final Notification results in the revocation or denial of the individual's hazardous materials endorsement.

If TSA did not serve the individual with an Initial Notification of Threat Assessment, or grants a waiver, the agency will transmit a Notification of No Security Threat to the individual and the State in which the individual applied for the endorsement.

Under the rule, TSA has the discretion to extend due dates both for an individual and for the agency. An individual must provide, in writing, a statement of good cause for extending the due date, at least two days prior to the due date to be extended. TSA anticipates that if an individual is attempting to correct erroneous records or gathering documents in support of a waiver request, the individual may need additional time because other entities do not produce the documents quickly. So long as the applicant provides an explanation of such problems, TSA will extend the time needed to complete the process.

Paragraph (i) of this section describes the procedure for appealing an immediate revocation of the hazardous materials endorsement. This may occur under rare circumstances where TSA determines during the course of conducting a security threat assessment, that sufficient factual and legal grounds exist to warrant immediate revocation. Under these circumstances, the individual must surrender the endorsement and cease transporting hazardous materials. TSA understands that removing the individual from service without an opportunity to correct the record may have adverse consequences, but TSA anticipates that this mechanism will not be used often. The individual may appeal this decision within 10 days, and must include all supporting documentation when he or she submits the appeal. TSA will provide a determination on the appeal within 10 days.

The rule provides that in connection with this subpart, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law, such as Sensitive Security Information (SSI); sensitive law enforcement and intelligence information; sources, methods, means, and application of intelligence techniques; and identities of confidential informants, undercover operatives, and material witnesses.

For determinations under § 1572.107, the determination that an individual poses a security threat will be based, in large part or exclusively, on classified national security information, unclassified information designated as SSI, or other information that is protected from disclosure by law.

Classified national security information is information that the President or another authorized Federal official has determined, pursuant to Executive Order 12958, must be protected against unauthorized disclosure in order to safeguard the security of American citizens, the country's democratic institutions, and America's participation within the community of nations.[30] Executive Order 12968 prohibits Federal employees from disclosing classified information to individuals who have not been cleared to have access to such information under the requirements of that Executive Order.[31] If the Assistant Administrator has determined that an individual who is the subject of a threat assessment proceeding poses a threat to transportation security, that individual will not be able to obtain a clearance to have access to classified national security information, and TSA has no authority to release such information to that individual.

The denial of access to classified information under these circumstances is consistent with the treatment of classified information under the Freedom of Information Act (FOIA), which specifically exempts such information from the general requirement under FOIA that all

[30] *See* E.O. 12958, 60 FR 19825, April 20, 1995.

[31] *See* E.O. 12968 sec. 3.2(a), 6.2(a)(1), 60 FR 40245, Aug. 7, 1995.

government documents are subject to public disclosure.[32]

SSI is unclassified information that is subject to disclosure limitations under statute and TSA regulations.[33] Under 49 U.S.C. 114(s), the Administrator of TSA may designate categories of information as SSI if release of the information would be detrimental to the security of transportation. The SSI designation allows TSA to limit disclosure of this information to people with a need to know in order to carry out regulatory security duties.[34]

Among the categories of information that the Administrator has defined as SSI by regulation is information concerning threats against transportation.[35] Thus, information that TSA obtains indicating that an individual poses a security threat, including the source of such information and the methods through which the information was obtained, will commonly be SSI or classified information. The purpose of designating such information as SSI is to ensure that those who seek to do harm to the transportation system and their associates and supporters do not obtain access to information that will enable them to evade the government's efforts to detect and prevent their activities. Disclosure of this information, especially to an individual specifically suspected of posing a threat to the transportation system, is precisely the type of harm that Congress sought to avoid by authorizing the Administrator to define and protect SSI.

Other types of information also are protected from disclosure by law due to their sensitivity in law enforcement and intelligence. In some instances, the release of information about a particular individual or his supporters or associates could have a substantial adverse impact on security matters. The release of the identities or other information regarding individuals related to a security threat determination by TSA could jeopardize sources and methods of the intelligence community, the identities of confidential sources, and techniques and procedures for law enforcement investigations or prosecution.[36] Release of such information also could have a substantial adverse impact on ongoing investigations being conducted by Federal law enforcement agencies, possibly giving a terrorist organization or other group a roadmap of the course and progress of an investigation. In certain instances, release of information could alert a terrorist's co-conspirators to the extent of the Federal investigation and the imminence of their own detection, thus provoking flight.

For the reasons discussed above, TSA does not intend to provide any classified information to the individual, and TSA reserves the right to withhold SSI or other sensitive material protected from disclosure under law. As noted above, TSA expects that information will be withheld only for determinations based on § 1572.107, which involve watchlists and other databases. When the determination is based on the individual's criminal history or alien status, TSA expects that the supporting records most likely will be disclosed to the individual upon a written request to TSA.

Section 1572.143 Waivers

Certain individuals may request a waiver, which permits the individual to hold or obtain a hazardous materials endorsement even if he or she does not meet the standards for the authorization. For instance, TSA believes that individuals who have committed a disqualifying crime may be rehabilitated to the point that they may be trusted in potentially dangerous jobs, such as the transportation of hazardous materials. The rule provides criteria that TSA will consider if the individual does not meet the criminal history standards. TSA believes that these factors are good indicators that an individual may be rehabilitated to the point that a waiver is advisable. The factors are: (1) The circumstances of the disqualifying act or offense; (2) restitution made by the individual; (3) Federal or State mitigation remedies; and (4) other factors TSA believes bear on the individual's potential security threat. These factors are set forth in the MTSA, at 46 U.S.C. 70105(c)(2).

TSA is developing internal criteria that will be used to determine whether a waiver should be granted to ensure uniform application of the waiver process. For instance, TSA may grant waivers to individuals who have been adjudicated as a mental defective or committed to a mental institution, as specified in § 1572.109. A basis for a waiver may include a requirement that a court, board, commission, or other lawful authority has determined that the individual is no longer a danger to him- or herself or others, or is capable of managing his or her own affairs. TSA requests comment on the appropriate criteria the agency should consider when determining whether to grant a waiver to these individuals.

In reviewing waiver applications, TSA may consider the U.S. Sentencing Guidelines as informal guidance. The Guidelines address the mitigation of federal sentences and explain the factors and circumstances that should be considered when departing from standard federal sentences.

Also, TSA is considering placing additional criteria in the rule for determining whether a waiver should be granted to an individual with a disqualifying offense. The criteria include: (1) At least three years have elapsed from the date the individual was released from incarceration for the offense to the date the individual is applying for the waiver; (2) the individual provides written proof that he or she has successfully completed or is currently meeting the conditions of his or her parole or probation; and (3) the individual has not been arrested within those three years. TSA requests comments on whether these factors should be added to the rule.

Note that TSA will not grant waivers from the standards in § 1572.107. Determinations under that section already take into account individual circumstances, and do not contain specific criteria on which TSA could base a decision to grant or deny a waiver. An individual is finally denied under § 1572.107 only after TSA has considered all of the circumstances. While the individual may appeal an Initial Notification of Threat Assessment issued under that section, once TSA determines that the individual does not meet the standards, no waiver is appropriate. Also, individuals who do not meet the citizenship requirements of the rule are not subject to a waiver. As noted above, FMCSA regulations require CDL holders to be U.S. citizens or lawful permanent residents of the U.S., and TSA cannot waive that requirement.

After reviewing an individual's application for a waiver, TSA will send a written decision to the individual and, if the waiver is granted, the State in which the individual applied for the hazardous materials endorsement within 30 days of the date of the individual's application for a waiver.

Rulemaking Analyses and Notices

Justification for Immediate Adoption

TSA is issuing this final rule without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows the agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice

[32] *See* 5 U.S.C. 552 (b)(1).

[33] *See* 49 U.S.C. 114(s); 49 CFR part 1520.

[34] *See* 49 CFR 1520.5(b).

[35] *See* 49 CFR 1520.7(i).

[36] *See* 5 U.S.C. 552(b)(7)(D), (E).

and comment procedures are ''impracticable, unnecessary or contrary to the public interest.''

The catastrophic effect of the attacks on the World Trade Center and Pentagon on September 11, 2001, revealed the vulnerability of the nation's transportation system to terrorism. National security and intelligence officials have warned that future terrorist attacks are likely. The number of commercial vehicles that carry hazardous materials is far greater than the number of aircraft that might be hijacked by terrorists. A vehicle carrying hazardous materials, if used as a weapon in a terrorist attack, could cause significant loss of life and property damage.

Section 1012 of the USA PATRIOT Act is a measure to increase the security of highway transportation of hazardous materials. The DOT began developing this rule as soon as the USA PATRIOT Act was enacted. Because of the likelihood of future terrorist attacks, and the potential for significant casualties and property damage in the event of a terrorist attack involving a vehicle carrying hazardous materials, FMCSA and TSA believe that immediate action is warranted, and TSA finds that notice and public comment procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. The delays inherent in such a process could make the difference between preventing and overlooking a terrorist threat.

However, TSA is not making the procedures for fingerprint checks that will eventually be included in this rule effective upon publication because the development of those procedures will require additional consultation with the States. Delaying the full implementation of the security threat assessment process, including submission of fingerprints, for 180 days will give the States, the DOJ, and TSA a sufficient amount of time to develop the infrastructure and procedures to complete the fingerprint requirements that will be a part of this rule. By publishing this rule now and making it effective immediately, however, TSA can begin checking individuals against terrorist watchlists and other databases using names and other databases, including the FBI's criminal history database, using names and other information, to begin to determine if any individuals pose a security threat. In addition, the rule places a self-disclosure requirement on individuals who hold hazardous materials endorsements.

TSA is requesting public comments on the rule. The agency will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. If changes to the rule are necessary to address transportation security more effectively, or in a less burdensome but equally effective manner, TSA will not hesitate to make such changes.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

TSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues since the events of September 11, 2001. This interim final rule responds to the background check requirements of section 1012 of the USA PATRIOT Act by establishing the criteria and procedures TSA will follow in determining whether an individual applying for, transferring, or renewing a hazardous materials (HM) endorsement for a commercial drivers license (CDL) poses a security risk warranting denial of the endorsement.

TSA has performed a preliminary analysis of the expected costs of this interim final rule for a 10-year period, from 2003 though 2012. Figures may change in the full Regulatory Evaluation that will be completed in the near future. As required by the Office of Management and Budget (OMB), the present value of this cost stream is calculated using a discount factor of 7 percent. All costs in this analysis are expressed in 2002 dollars. TSA requests comments on all methodologies, factors or numbers contained in this analysis, and will consider responses in the final rule analysis.

Increment Rule Cost

Table 1 summarizes the estimated incremental compliance costs associated with this rule. It is estimated that this rule will cost $633 million (present value, $470 million) over 10 years.

TABLE 1

(million)

	Nominal value	Present value
Population	8.7	
Direct Costs:		
Fingerprint Capture	$434	$320
Government Impact	$55	$43
State Impact	$.8	$.8
Total Direct Costs	$490	$364
Opportunity Costs:		
Lost Time	$143	$106
Total Rule Cost	$633	$470

Background Check Population

The primary incremental cost component of this rule is the cost associated with the fingerprinting process. Under this rule, 180 days after the effective date of the rule applicants must have successfully completed a fingerprint-based criminal history records check (CHRC) prior to receiving a new, renewed or transferred hazardous materials endorsement. Based on figures from the Federal Motor Carrier Safety Administration (FMCSA), it is estimated that there are currently 3.5 million drivers holding a CDL with a hazardous materials endorsement. A pending rule from the FMCSA will require States to require drivers to renew their hazardous materials endorsement every five years. Therefore, it is assumed that one-fifth of that number will apply for renewal each year.

Growth for drivers affected by this rule is estimated to be 2.8 percent annually. This projection is the aggregate growth rates of the three primary occupational categories requiring CDLs, based on Bureau of Labor Statistics' Occupational Employment Projections. This figure accounts for growth and net replacement to the CDL work force. Specific data on drivers holding a CDL with a hazardous materials endorsement is not available at this time. However, this growth number is considered representative for cost estimating purposes. As shown in Table 2, this rule will require a total population of 8.7 million to be fingerprinted over a ten-year period.

TABLE 2

[,000]

Year	Number	Growth	Renewals	CHRC population
2003	3,500		681	681
2004	3,598	98	700	798
2005	3,699	101	720	820
2006	3,802	103	740	843
2007	3,908	106	760	867
2008	4,018	109	782	891
2009	4,130	112	804	916
2010	4,245	116	826	941
2011	4,364	119	849	968
2012	4,486	122	873	995
		986	7,734	8,720

Name Checks

Following publication of the rule, TSA will begin to conduct security threat assessments on hazardous materials endorsement holders using names and biographical data contained in the Commercial Driver's License Information System (CDLIS). Some assessments will include checking names against the National Crime Information Center (NCIC) database, the Interstate Identification Index (III), and other databases, such as terrorism watch lists. FMCSA conducted a similar check after September 11, 2001. Industry incremental costs from this requirement are considered to be di minimis, because the information already is available and much of the process is automated. However, there is an incremental cost to the government, which is discussed later in this section.

Fingerprinting Cost

Estimates for the cost of the fingerprinting process vary considerably and depend on where and how the fingerprints are collected and processed. Some State DMVs are currently equipped to process fingerprints. For other states, it is anticipated that individuals will use local police stations for fingerprinting. Processing costs of approximately $50 per individual consist of the following elements: $22 fee to the FBI for processing fingerprints, approximately $7.00 to the Office of Personnel Management (OPM) Special Agreement Checks Billing Rates for Regulatory Purpose fingerprints, $16 personnel cost to take the fingerprints, complete the paperwork and forward for processing, and $5.00 for fingerprint cards and material. Using these assumptions, it is estimated that the cost to conduct a fingerprint-based background check on 8.7 million individuals over a ten-year period is $434 million (present value, $320 million).

Lost Time

There are additional factors, such as opportunity costs, that complicate estimating the industry's incremental compliance costs associated with this interim final rule. One is the amount of time an employee spends submitting to fingerprinting, which is an opportunity cost. This time can vary considerably based on distance the individual has to travel and the wait time. Based on similar analyses of the background check process for aviation security rules, TSA estimates that it will take one hour of an individual's time to comply with the fingerprinting requirement. Based on the Bureau of Labor Statistics, 2001 National Occupational Employment and Wage Estimates, the mean hourly wage of a commercial truck driver is approximately $16.00 (2002 dollars). Using these assumptions, it is estimated that the cost of lost time associated with this rule over a ten-year period is $143 million (present value, $106 million).

Government Impact

There are two primary incremental cost components of this rule for the government. First, as previously discussed in the Name Checks section, TSA will conduct name checks on current drivers with hazardous materials endorsements for the first 180 days after the rule becomes effective. For purposes of this analysis, we have used one year in order to be certain that all costs are considered. This one-year cost consists of staffing an office to administer the name-based background check process (labor, other direct costs, and etc.). It is estimated that it will take approximately 53 staff-years to process and adjudicate the results of this check. This estimate is based on 25 percent of the names returning results that require further review, with each review taking, on average 5 minutes, to complete. The fully loaded labor rate for personnel conducting these reviews is approximately $40.00 an hour. The one-year cost to process and adjudicate these checks is estimated to be $4.6 million (present value, $4.6 million).

Applicants notified of disqualifying offenses have the right to appeal and apply for a waiver under this rule. It is estimated that it will take approximately 6.4 staff-years to process and respond to these appeals. This figure is based on an estimate of 1 percent of those individuals notified of disqualifying offenses electing to appeal and apply for a waiver of the initial notification, with each action taking, on average, 1 hour to process. The fully loaded labor rate for personnel processing these actions is approximately $40.00 an hour. The one-year cost for appeals and waivers, including labor and other direct costs, of the name-based background check is estimated to be $559,000 (present value, $559,000). The total one-year

incremental cost to the Government for the entire name-based background check process is estimated to be $5.2 million (present value, $5.2 million).

The second primary incremental cost component is associated with recurring fingerprint-based checks required for new, renewed or transferred hazardous materials endorsements. It is estimated that it will take approximately 40 staff-years to adjudicate the fingerprint check results. This estimate is based on 25 percent of the checks returning results that require further review, with each review taking, on average, 5 minutes to complete. The fully loaded labor rate for personnel conducting these reviews is approximately $40.00 an hour. The incremental cost to adjudicate these results, including labor and other direct costs, over a ten-year period is estimated to be $44.4 million (present value, $33.8 million).

Consistent with the name-based check, applicants notified of disqualifying offenses have the right to appeal and apply for a waiver under this rule. It is estimated that it will take approximately 4.8 staff-years to process and respond to these actions. This figure is based on an estimate of 1 percent of those individuals notified of disqualifying offenses electing to appeal or apply for a waiver of the initial notification, with each action taking, on average, 1 hour to process. The fully loaded labor rate for personnel processing these actions is approximately $40.00 an hour. The incremental cost to adjudicate these actions, including labor and other direct costs, over a ten-year period is estimated to be $4.2 million (present value, $3.2 million). The total incremental cost to the Government for the fingerprint process over a ten-year period is estimated to be $48.6 million (present value, $36.9 million).

To implement these processes, TSA will need to modify current systems to handle name check and fingerprint check data. The one-time cost of these changes is estimated to be $450,000 to modify existing software programs to store data, and to train system users and administrators. Annual maintenance costs associated with administration of this system are estimated to be $90,000 annually. Using these assumptions, it is estimated that the incremental cost associated with TSA systems over a ten-year period is $1.35 million (present value, $1.13 million).

Using these assumptions, it is estimated that the total increment cost impact on the government of this final rule over a ten-year period is $55.2 million (present value, $43.3 million).

States Impact

Every State and the District of Columbia has a Department of Motor Vehicles (DMV) that administers records for all of its licensed drivers, including programs for CDLs and HM endorsements. This rule may require States to change procedures for issuing HM endorsements and, therefore, has an incremental cost. States will have to develop and implement procedures to process background check information for all applicants for an HM endorsement.

The Association of American Motor Vehicle Administrators (AAMVA) estimates that it will cost States $15,000 each to upgrade computer systems to handle these requirements. This amount includes a one-time cost to modify existing software programs to store data, train system users and administrators, and modest informational outreach to interested parties concerning the changes. It is assumed that all of these activities can occur with existing equipment. To obtain the $15,000 estimate, AAMVA looked at several State motor vehicle data systems retrofits that they believe were comparable to the changes required by this IFR. Using these assumptions, it is estimated that the incremental cost of computer system and process changes over a ten-year period is $765,000 (present value, $765,000).

Benefits

The primary benefit of the rule will be increased protection to U.S. property, citizens and others traveling in the U.S. from acts of terrorism. The changes envisioned in this interim final rule are an integral part of the total program needed by the transportation industry to prevent a terrorist incident in the future.

As stated previously in this preamble, part of TSA's mission is to ensure the security of hazardous materials in transportation so that these materials are not used in an act of terrorism. Two tragedies provide examples of the harm that can occur from explosive material delivered in a van or light truck; the 1993 New York World Trade Center (WTC) and the 1995 Oklahoma City Federal Building. Although drivers with hazardous material endorsements did not perpetrate these terrorist acts, the examples do provide a basis of comparison. Vehicles used in the transportation of hazardous materials typically have much larger capacities than the vehicles used in these two incidents. If these vehicles were used to carry out a terrorist act, the damage would be far greater. If certain hazardous materials were involved, if could affect an even greater number of people and amount of property over a larger area.

The 1993 WTC bombing killed six people, injured over 1,000, and resulted in over $510 million in insured losses. The Oklahoma City bombing killed 168 people, injured 601, and resulted in over $125 million in insured losses. In order to provide a benchmark comparison of the expected benefits of this final rule with estimated costs in dollars, a minimum of $3.0 million is used as the value of avoiding a fatality (based on the willingness to pay approach for avoiding a fatality). The value of avoiding bodily injury depends on the severity of the injury and ranges from $6,000 for a minor injury to $2.3 million for a critical injury. These figures are based on Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs (Economic Values), FAA–APO–98–8, June 1998, adjusted to 2002 dollars.

The intent of this rule is to prevent a terrorist attack similar to, or worse than, these examples. The 1993 WTC resulted in $113 million in loss of life and bodily injury, and over $510 million in insured losses (based on figures from the Federal Emergency Management Agency). Total losses are estimated to be $623 million (present value, $468 million). The 1995 Oklahoma City bombing resulted in $560 million in loss of life and bodily injury, and over $125 million in insured losses. Total losses are estimated to be $685 million (present value, $514 million). The prevention of one of these tragedies would offset the cost of this final rule, and supports the rule as cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, as amended, (RFA) was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' TSA has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Current industry practice is for drivers to obtain their CDL certification as a condition of employment. Individuals are required to have a current CDL with appropriate endorsements to be eligible for employment. This is an employment

cost typically borne by the individual employee. Therefore, the burden on small business entities from this final rule is expected to be *de minimis*.

TSA conducted the required review of this rule and determined that it will not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), TSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This interim final rule contains the following new information collection requirements.

This rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)) (PRA). Accordingly, the paperwork burden associated with the rule will be submitted to the Office of Management and Budget (OMB) for review. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget has approved it.

Need: Truck drivers will complete an application and provide fingerprints for the purpose of conducting a background check. It is anticipated that State and local agencies will collect this information when individuals apply for, renew or transfer commercial drivers licenses that includes a hazardous material endorsement. This information will be used to conduct background checks to ensure that these individuals do not have a disqualifying criminal offense, as described in 49 CFR 1572.103.

Description of Respondents: Individuals applying for, renewing or transferring a hazardous materials endorsement for a CDL.

Burden: It is estimated that 3.5 million people have hazardous material endorsements for a CDL. This number is expected to grow by approximately 2.8% people per year for a ten-year total of approximately 4.5 million people (450,000 annualized). The number of fingerprint applications to be collected over a ten-year period is approximately 8.7 million (870,000 annualized). This number includes new applicants and renewals, which on average, occur every five years.

Fingerprint costs consist of a processing fee, processing time, and material. The average cost for the fingerprint process is approximately $50 per set. It is estimated that it will take an average of thirty minutes to complete an FBI fingerprint card and forward it to the FBI for further processing. Based on these factors, it is estimated that the background check process will involve 4.4 million hours over the ten-year period (436,000 annualized) and will cost $452 million over the ten-year period ($45.2 million annualized).

TSA requests comments on the estimates of the paperwork and information collection burden, and whether these burdens can be minimized. TSA believes that requesting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by this regulation.

Executive Order 13132 (Federalism)

Executive Order 13132 requires TSA 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 the Executive Order, TSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this interim final rule does have Federalism implications or a substantial direct effect on the States. The rule does not presently require States to collect or process fingerprints. TSA will be developing those procedures in consultation with the States over the next 180 days.

TSA notes that FMCSA has communicated with the States on the requirements of the USA PATRIOT Act. The Assistant Administrator of FMCSA wrote to licensing officials in each State on October 31, 2001, briefly summarizing section 1012 of the USA PATRIOT Act, and asking them to continue issuing and renewing hazardous materials endorsements until the regulations implementing section 1012 were completed. Some States have already enacted legislation they consider necessary to carry out the mandates of section 1012.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, TSA has not prepared a written assessment under the UMRA.

Environmental Analysis

TSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this final rule will not have any significant impact on the quality of the human environment.

Energy Impact

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has determined that this rule is not a major regulatory action under the provisions of the EPCA.

Trade Impact Assessment

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. TSA will continue to consult with Mexico and Canada under the North American Free Trade Agreement to ensure that any adverse impacts on trade are minimized. This rule applies only to individuals applying for a State-issued hazardous materials endorsement for a commercial drivers license. Thus, TSA has determined that this rule will have no impact on trade.

List of Subjects in 49 CFR Parts 1570 and 1572

Commercial drivers license, Criminal history background checks, Explosives, Hazardous materials, Motor carriers, Motor vehicle carriers, Security measures, Security threat assessment.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends 49 CFR Chapter XII, Subchapter D as follows:

SUBCHAPTER D—MARITIME AND LAND TRANSPORTATION SECURITY

■ 1. Add a Part 1570 to read as follows:

PART 1570—LAND TRANSPORTATION SECURITY: GENERAL RULES

Sec.
1570.1 Scope.
1570.3 Fraud and intentional falsification of records.

Authority: 49 U.S.C. 114, 40113, 46105.

§ 1570.1 Scope.

This part applies to any person involved in land transportation as specified in this part.

§ 1570.3 Fraud and intentional falsification of records.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with this subchapter, or exercise any privileges under this subchapter.

(b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access medium, or identification medium issued under this subchapter or pursuant to standards in this subchapter.

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR LAND TRANSPORTATION SECURITY

■ 2. Revise the authority citation for part 1572 to read as follows:

Authority: 49 U.S.C. 114, 5103a, 40113, 46105.

■ 3. Sections 1572.1 through 1572.11 are designated as subpart A, with the following heading:

Subpart A—Requirements to Undergo Security Threat Assessments

■ 4. Add a new § 1572.3 to read as follows:

§ 1572.3 Terms used in this part.

For purposes of this part:

Alien means any person not a citizen of the United States.

Alien registration number means the number issued by the United States Department of Homeland Security to an individual when he or she becomes a lawful permanent resident of the United States.

Commercial drivers license (CDL) is used as defined in 49 CFR 383.5.

Convicted means any plea of guilty or *nolo contendere*, or any finding of guilt.

Endorsement is used as defined in 49 CFR 383.5.

Final Notification of Threat Assessment means a final administrative determination by TSA that an individual poses a security threat warranting denial of the authorization for which the individual is applying.

Hazardous materials is used as defined in 49 CFR 383.5.

Incarceration means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution, on a full or part-time basis pursuant to a sentence imposed as the result of a conviction.

Initial Notification of Threat Assessment means an initial administrative determination by TSA that an individual poses a security threat warranting denial of the authorization for which the individual is applying.

Lawful permanent resident means an individual who has been lawfully admitted for permanent residence to the United States, as defined in 8 U.S.C. 1101.

Mental institution means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Notification of No Security Threat means an administrative determination by TSA that an individual does not pose a security threat warranting denial of the authorization for which the individual is applying.

Severe transportation security incident means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

State means a State of the United States and the District of Columbia.

■ 5. Add a new section 1572.5 to read as follows:

§ 1572.5 Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement.

(a) *Scope.* This section applies to State agencies responsible for issuing hazardous materials endorsements for a commercial drivers license, and individuals who hold or are applying for such endorsements, under 49 CFR part 383.

(b) *Individuals.* (1) *Requirements.* Beginning on September 2, 2003:

(i) *Prohibitions.* No individual may hold a CDL with a hazardous materials endorsement, or exercise the privileges of a hazardous materials endorsement, if:

(A) The individual does not meet the citizenship status requirements in § 1572.105;

(B) The individual has a disqualifying criminal offense, as described in § 1572.103;

(C) The individual has been adjudicated as a mental defective or committed to a mental institution, as described in § 1572.109; or

(D) TSA has notified the individual that he or she poses a security threat warranting denial of the endorsement, as described in § 1572.107.

(ii) *Surrender of endorsement.* An individual who is prohibited from holding a CDL with a hazardous materials endorsement under this section must surrender the hazardous materials endorsement to the issuing State.

(iii) *Continuing responsibilities.* Each individual with a hazardous materials endorsement who is convicted of, wanted, or under indictment in any jurisdiction, civilian or military, for, or found not guilty by reason of insanity of, a disqualifying crime listed in § 1572.103; who is adjudicated as a mental defective or committed to a mental institution as specified in § 1572.109; or who renounces his or her

U.S. citizenship; must report the offense, adjudication, or commitment to the State that issued the endorsement, and surrender the endorsement to the State, within 24 hours of the conviction, finding of not guilty by reason of insanity, adjudication, commitment, or renunciation.

(2) *Submission of fingerprints.* (i) From May 5, 2003, to November 3, 2003, an individual may submit fingerprints, in a form and manner specified by TSA, when a State revokes the individual's hazardous materials endorsement under paragraph (c)(1) of this section.

(ii) Beginning on November 3, 2003, an individual must submit fingerprints, in a form and manner specified by TSA, when he or she applies to obtain, renew, or transfer a hazardous materials endorsement for a CDL, or when requested by TSA.

(iii) When submitting fingerprints under this section, the individual, or his or her employer, is responsible for the fee charged by the person or other entity collecting the fingerprints and generating the individual's criminal history.

(c) *States.* (1) From May 5, 2003, to November 3, 2003, each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the standards for security threat assessment in paragraph (d) of this section.

(2) No later than November 3, 2003:

(i) No State may issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

(ii) Each State must notify each individual holding a hazardous materials endorsement issued by that State that he or she will be subject to the security threat assessment described in this section as part of any application for renewal of the endorsement, at least 180 days prior to the expiration date of the endorsement. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 90 days before the expiration date of the endorsement.

(3) From November 3, 2003, to April 29, 2004, while TSA is conducting a security threat assessment on an individual—

(i) If the individual holds a CDL with a hazardous materials endorsement, and is applying for renewal or transfer of the endorsement, the State that issued the endorsement may extend the expiration date of the individual's endorsement until the State receives a Final Notification of Threat Assessment or Notification of No Security Threat from TSA.

(ii) If the individual is applying for a hazardous materials endorsement for the first time, the State may not issue the endorsement until the State receives a Notification of No Security Threat from TSA.

(d) Standards for security threat assessment. (1) TSA determines that an individual does not pose a security threat warranting denial of a hazardous materials endorsement for a CDL if:

(i) The individual meets the citizenship status requirements in § 1572.105;

(ii) The individual does not have a disqualifying criminal offense, as described in § 1572.103;

(iii) The individual has not been adjudicated as a mental defective or committed to a mental institution, as described in § 1572.109; and

(iv) TSA conducts the analyses described in § 1572.107 and determines that the individual does not pose a security threat.

(2) In conducting the security threat assessment requirements of this section, TSA uses one or more of the following:

(i) An individual's fingerprints.

(ii) An individual's name.

(iii) Other identifying information.

(3) When reviewing the individual's criminal history records, TSA will not issue a Notification of No Security Threat, and will alert the State(s) and the Federal Motor Carrier Safety Administration (FMCSA) if the records indicate a disqualifying criminal offense listed in the FMCSA's rules for holders of CDLs at 49 CFR 383.51, until the FMCSA or the State(s) informs TSA that the individual is not disqualified under that section.

(4) If TSA determines during the course of conducting a security threat assessment, that it is necessary to revoke a hazardous materials endorsement immediately, TSA will direct the State to revoke a hazardous materials endorsement immediately. The individual may appeal the revocation following surrender of the endorsement, pursuant to the procedures set forth in § 1572.141(i).

(e) *Application form.* (1) When an individual applies to a State to issue, renew, or transfer a hazardous materials endorsement for a CDL, the State must have the individual complete an application that includes the following:

(i) The disqualifying crimes identified in § 1572.103.

(ii) A statement that the individual signing the application:

(A) Was not convicted, or found not guilty by reason of insanity, of any disqualifying crime in any jurisdiction, civilian or military, during the 7 years before the date of the individual's application;

(B) Was not released from incarceration in any jurisdiction, civilian or military, for committing any disqualifying crime during the 5 years before the date of the individual's application;

(C) Is not wanted or under indictment in any jurisdiction, civilian or military, for a disqualifying crime;

(D) Has not been adjudicated as a mental defective or committed to a mental institution involuntarily;

(E) Is either a United States citizen who has not renounced his or her United States citizenship, or a lawful permanent resident of the United States;

(F) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(G) Has been informed that Federal regulations under 49 CFR 1572.5(b) impose a continuing obligation to disclose to the State within 24 hours if he or she is convicted, or found not guilty by reason of insanity, of any disqualifying crime, or adjudicated as a mental defective or committed to a mental institution, while he or she has a hazardous materials endorsement for a CDL.

(iii) A statement reading:

Privacy Act Notice: *Authority*: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose*: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial drivers license. Your Social Security Number (SSN) or alien registration number will be used as your identification number in this process and to verify your identity. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will prevent the completion of your security threat assessment, without which you may not be granted a hazardous materials endorsement. *Routine Uses*: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(iv) A statement reading:

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an

omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

(v) Lines for the individual's—

(A) Printed name, including first, middle, and last, and any applicable suffix.

(B) Current residential address, and all other residential addresses for the previous seven years.

(C) Date of birth.

(D) Social security number, if the individual is a citizen of the United States, and date of naturalization, if the individual is a naturalized citizen of the United States.

(E) Gender.

(F) City, State, and country of birth.

(G) Citizenship.

(H) Alien registration number, if the individual is a lawful permanent resident of the United States.

(I) Signature and date of signature.

(2) Each individual must complete and sign the application form. The State must forward it to TSA in a form and manner acceptable to TSA.

(3) The State must inform the individual that a copy of the individual's criminal history record will be provided to the individual by TSA, if the individual makes a written request for the record.

(f) *Determination of arrest status.* When a criminal history records check on an individual applying for a hazardous endorsement for a CDL discloses an arrest for any disqualifying crime listed in § 1572.103 without indicating a disposition, TSA follows the procedures in § 1572.103.

(g) *Notification.* (1) *Notification of No Security Threat.* If, after conducting the security threat assessment, TSA determines that an individual meets the standards described in paragraph (d) of this section, TSA serves a Notification of No Security Threat to the State in which the individual applied for the hazardous material endorsement.

(2) *Initial Notification of Threat Assessment.* If, after conducting the security threat assessment, TSA determines that an individual does not meet the standards described in paragraph (d) of this section, TSA serves an Initial Notification of Threat Assessment on the individual and the State in which the individual applied for the hazardous materials endorsement, in accordance with § 1572.141(b). The individual may appeal this determination under the procedures in § 1572.141.

(3) *Final Notification of Threat Assessment.* If, after completing the process in § 1572.141, TSA determines that an individual does not meet the standards described in paragraph (d) of this section, TSA serves a Final Notification of Threat Assessment on the individual and the State in which the individual applied for the hazardous materials endorsement, in accordance with § 1572.141(e). The individual may not appeal this determination, but may apply for a waiver.

(4) *Waivers.* If an individual does not meet the standards in paragraph (d) of this section, he or she may apply for a waiver under § 1572.143.

(5) *State notification requirements.* Within 15 days of the receipt of a Notification of No Security Threat, a Final Notification of Threat Assessment, or a grant of a waiver, the State must:

(i) Update the individual's permanent record to reflect:

(A) The results of the security threat assessment;

(B) The issuance or denial of a hazardous materials endorsement; and

(C) The hazardous materials endorsement expiration date.

(ii) Notify the Commercial Drivers License Information System operator of the results of the security threat assessment.

(iii) Revoke or deny the individual's hazardous materials endorsement, if TSA serves the State with a Final Notification of Threat Assessment.

(iv) Grant or renew the individual's hazardous materials endorsement, if TSA serves the State with a Notification of No Security Threat, or a written decision from TSA to grant a waiver, and the individual is otherwise qualified.

■ 6. Add a new Subpart B to Part 1572 to read as follows:

Subpart B—Standards, Appeals, and Waivers for Security Threat Assessments

Sec.

1572.101 Scope and definitions.
1572.103 Disqualifying criminal offenses.
1572.105 Citizenship status.
1572.107 Other analyses.
1572.109 Mental defects.
1572.111–1572.139 [Reserved]
1572.141 Notification of threat assessment and appeal.
1572.143 Waivers.

§ 1572.101 Scope and definitions.

(a) This subpart applies to individuals who hold or are applying for a hazardous material endorsement for a CDL.

(b) For purposes of this subpart, the following terms have the following definitions.

Associate Administrator/Chief Operating Officer means the Associate Administrator who is also the Chief Operating Officer of TSA, or his or her designee.

Authorization means any credential or endorsement for which TSA conducts a security threat assessment under this part, including a hazardous materials endorsement for a CDL.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service;

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark; or

(5) The date in an e-mail showing when it was sent.

Day means calendar day.

§ 1572.103 Disqualifying criminal offenses.

(a) An individual has a disqualifying criminal offense if the individual:

(1) Was convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in paragraph (b) of this section in any jurisdiction, civilian or military, during the 7 years before the date of the individual's application for the authorization, except as provided in paragraph (d) of this section;

(2) Was released from incarceration for committing any of the disqualifying crimes listed in paragraph (b) of this section in any jurisdiction, civilian or military, during the 5 years before the date of the individual's application for the authorization, except as provided in paragraph (d) of this section; or

(3) Is wanted or under indictment in any jurisdiction, civilian or military, for any of the disqualifying crimes listed in paragraph (b) of this section.

(b) The disqualifying crimes are felonies involving:

(1) Any crime listed in 18 U.S.C. Chapter 113B—Terrorism.

(2) Murder.

(3) Assault with intent to murder.

(4) Espionage.

(5) Sedition.

(6) Kidnapping or hostage taking.

(7) Treason.

(8) Rape or aggravated sexual abuse.

(9) Unlawful possession, use, sale, distribution, or manufacture of an explosive, explosive device, firearm, or other weapon.

(10) Extortion.

(11) Robbery.

(12) Arson.

(13) Distribution of, intent to distribute, possession, or importation of a controlled substance.

(14) Dishonesty, fraud, or misrepresentation, including identity fraud.

(15) A crime involving a severe transportation security incident.

(16) Improper transportation of a hazardous material.

(17) Bribery.

(18) Smuggling.

(19) Immigration violations.

(20) Violations of the Racketeer Influenced and Corrupt Organizations Act; 18 U.S.C. 1961, *et seq.*

(21) Conspiracy or attempt to commit any of the crimes listed in paragraph (b) of this section.

(c) *Determination of arrest status.* (1) When a criminal history records check on an individual discloses an arrest for any disqualifying crime listed in paragraph (b) of this section without indicating a disposition, TSA will notify the individual.

(2) The individual must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense within 30 days after the service date of the notification in paragraph (c)(1) of this section. If TSA does not receive proof in that time, TSA may issue an Initial Notification of Threat Assessment in accordance with § 1572.141.

(d) The time periods specified in paragraphs (a)(1) and (a)(2) of this section do not apply to:

(1) The crimes listed in paragraphs (b)(1), (b)(4), (b)(5), (b)(7), (b)(12), (b)(15), and (b)(16) of this section;

(2) The crime in paragraph (b)(9) of this section involving an explosive; and

(3) Conspiracy or attempt to commit the crimes listed in paragraphs (d)(1) and (d)(2) of this section.

§ 1572.105 Citizenship status.

(a) An individual applying for an authorization under this part must be either—

(1) A citizen of the United States who has not renounced his or her United States' citizenship; or

(2) A lawful permanent resident of the United States.

(b) To determine an individual's citizenship status, TSA checks relevant Federal databases, and may perform other checks, including verifying the validity of the individual's social security number or alien registration number.

§ 1572.107 Other analyses.

(a) TSA checks the following databases and conducts a security threat analysis before determining that an individual does not pose a security threat warranting denial of an authorization under this part:

(1) Interpol and other international databases;

(2) TSA watchlists; and

(3) Any other databases relevant to determining whether an individual poses a security threat or that confirm an individual's identity.

(b) An individual poses a security threat under this section when TSA determines or suspects him—or her of being a threat—

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

§ 1572.109 Mental defects.

(a) An individual has a mental defect if he or she has been—

(1) Adjudicated as a mental defective; or

(2) Committed to a mental institution.

(b) An individual is adjudicated as a mental defective if—

(1) A court, board, commission, or other lawful authority has determined that the individual, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to him or herself or others, or lacks the mental capacity to contract or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case; and a finding of incompetency to stand trial or a finding of not guilty by reason of lack of mental responsibility by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An individual is committed to a mental institution if—

(1) He or she is formally committed to a mental institution by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for mental defectiveness, mental illness, and drug use.

(2) This does not include a commitment to a mental institution for observation or voluntary admission to a mental institution.

§ 1572.111–1572.139 [Reserved]

§ 1572.141 Notification of threat assessment and appeal.

(a) *Scope.* This section applies to individuals who receive an Initial Notification of Threat Assessment stating that they do not meet the standards for a security threat assessment and who wish to appeal the notification.

(b) *Initial Notification of Threat Assessment.* (1) If TSA determines that an individual poses a security threat warranting denial of the authorization, TSA serves upon the individual an Initial Notification of Threat Assessment.

(2) The Initial Notification includes—

(i) A statement that TSA has determined that the individual poses a security threat warranting denial of the authorization;

(ii) The basis for the determination; and

(iii) Information about the correction of records and appeals processes.

(c) *Grounds for Appeal.* (1) An individual may appeal an Initial Notification only if the individual is asserting that he or she meets the standards of the authorization for which he or she is applying.

(2) If the Initial Notification was based on a conviction for a disqualifying crime listed in § 1572.103, the individual may present evidence that the underlying criminal record is incorrect, or that the conviction was pardoned, expunged, or overturned on appeal. An executive pardon, expungement, or overturned conviction may nullify a disqualifying conviction if the pardon, expungement, or overturned conviction does not impose any restrictions on the individual. A correction of the record(s) may nullify the disqualifying conviction.

(d) *Appeal.* An individual may initiate an appeal of an Initial Notification by submitting a written request for materials or a written reply to TSA. If the individual does not initiate an appeal within the time periods specified in this paragraph, TSA serves a Final Notification of Threat Assessment under paragraph (e) of this section.

(1) *Request for materials.* Not later than 15 days after the date of service of the Initial Notification, the individual may serve upon TSA a written request for copies of the materials upon which the Initial Notification was based.

(2) *TSA response.* Not later than 30 days after receiving the individual's request for materials, TSA serves copies upon the individual of the releasable materials upon which the Initial Notification was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(3) *Correction of records.* If the Initial Notification of Threat Assessment was based on an FBI criminal history record that the individual believes is erroneous, the individual may correct the record, as follows:

(i) The individual may contact the local jurisdiction responsible for the information and the FBI or other agency to complete or correct the information contained in his or her record.

(ii) The individual seeking to correct his or her record must provide TSA with the revised FBI criminal history record, or a certified true copy of the information from the appropriate court, before TSA may determine that the

individual meets the standards for the security threat assessment.

(4) *Reply.* (i) The individual may serve upon TSA a written reply to the Initial Notification not later than 15 days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to the individual's request for materials under paragraph (d)(2) of this section, if the individual served such a request.

(ii) In an individual's reply, TSA will consider only material that is relevant to whether the individual meets the standards for the security threat assessment in § 1572.5(d).

(5) *Final determination.* Not later than 30 days after TSA receives the individual's reply, TSA serves a Final Notification of Threat Assessment or a Withdrawal of the Initial Notification in accordance with paragraph (e) of this section.

(e) *Final Notification of Threat Assessment.* (1) Review. The Associate Administrator/Chief Operating Officer reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to the agency before making a final decision.

(2) *Issuance.* If the Associate Administrator/Chief Operating Officer determines that the individual poses a security threat, the Associate Administrator/Chief Operating Officer serves upon the individual, and, in the case of a security threat assessment under § 1572.5, the State in which the individual applied for the authorization, a Final Notification of Threat Assessment.

(i) The Final Notification to the individual includes a statement that the Associate Administrator/Chief Operating Officer has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him or her, and has determined that the individual poses a security threat warranting denial of the authorization.

(ii) The Final Notification to the State contains a statement that TSA has determined that the individual poses a security threat warranting denial of the authorization.

(3) *Withdrawal of Initial Notification.* If the Associate Administrator/Chief Operating Officer does not conclude that the individual poses a security threat warranting denial of the authorization, TSA serves upon the individual a Withdrawal of the Initial Notification. In the case of a security threat assessment under § 1572.5 of this part, TSA will also serve a Notification of No Security Threat to the State in which the individual applied for the authorization.

(f) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in section 1.1(d) of Executive Order 12968, and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(g) *Extension of time.* TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

(h) *Judicial review.* For purposes of judicial review, the Final Notification of Threat Assessment constitutes a final TSA order in accordance with 49 U.S.C. 46110.

(i) *Appeal of immediate revocation.* (1) If TSA directs a State to revoke the hazardous materials endorsement immediately pursuant to § 1572.5(d)(4), the individual may—

(i) Within 10 days of revocation, submit a written request to TSA to appeal the decision on which the revocation was based.

(ii) The written request must include the basis on which the appeal should be granted, including a correction of records, and all supporting documentation.

(2) Within 10 days of receipt of the written request, TSA will serve on the individual and the State in which the individual applied for a hazardous materials endorsement, its final decision and a statement explaining the basis for the decision.

§ 1572.143 Waivers.

(a) *Scope.* (1) Except as provided in paragraph (a)(2), this section applies to individuals who do not meet the standards for a security threat assessment and who are requesting a waiver from those standards.

(2) Individuals who do not meet the standards for a security threat assessment under § 1572.105 or § 1572.107 are not eligible for a waiver.

(b) *Waivers.* (1) An individual who does not meet the standards for a security threat assessment in this part may send a written request to TSA for a waiver at any time but not later than 15 days from the date of service of the Final Notification of Threat Assessment.

(2) In determining whether to grant a waiver, TSA will consider the following factors, if the disqualification was based on a disqualifying criminal offense:

(i) The circumstances of any disqualifying act or offense;

(ii) Restitution made by the individual;

(iii) Any Federal or State mitigation remedies; and

(iv) Other factors that indicate the individual does not pose a security threat warranting denial of the authorization for which he or she is applying.

(c) *Grant or denial of waivers.* TSA will send a written decision to grant or deny a waiver under this section to the individual and, if applicable, the State in which the individual applied for the authorization, within 30 days of the service date of the individual's application for a waiver, or such longer period as TSA may determine for good cause.

(d) *Extension of time.* TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

Issued in Arlington, VA on April 25, 2003.

J.M. Loy,

Administrator.

[FR Doc. 03–10830 Filed 5–2–03; 8:45 am]

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Part VII

Office of Government Ethics

5 CFR Part 2601

Implementation of Office of Government Ethics Statutory Gift Acceptance Authority; Proposed Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2601

RIN 3209–AA21

Implementation of Office of Government Ethics Statutory Gift Acceptance Authority

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing a proposed regulation that would implement the agency gift acceptance authority contained in section 2 of the Office of Government Ethics Authorization Act of 1996, which authorizes OGE to accept gifts and certain other items for the purpose of aiding or facilitating the work of the agency and which requires the Director of OGE to issue regulations establishing criteria for determining whether the exercise of this gift acceptance authority is appropriate. The proposed rule would state the policy regarding the use of this authority, provide definitions of key terms, establish guidelines for the solicitation and acceptance of gifts, state certain conditions for acceptance and use of gifts, and establish accounting requirements.

DATES: Written comments by executive branch agencies and other interested persons are invited and are due on or before August 4, 2003.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Ms. Allison C. George. Comments also may be sent electronically to OGE's Internet E-mail address at *usoge@oge.gov.* For E-mail messages, the subject line should include the following reference—''Comments Regarding Proposed Gift Acceptance Authority Regulations.''

FOR FURTHER INFORMATION CONTACT: Allison C. George, Associate General Counsel, Office of Government Ethics, Telephone: 202–208–8000; TDD: 202–208–8025; FAX 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule, to be codified once finalized in a new part 2601 of 5 CFR, would implement section 2 of the Office of Government Ethics Authorization Act of 1996 (the 1996 Reauthorization Act), Pub. L. 104–179, 110 Stat. 1566, which amended the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. app. § 403(b).

Section 403(b)(1) of the Ethics Act as amended authorizes the Director of OGE to accept and utilize on behalf of the United States, any gift, donation, bequest or devise of money, use of facilities, personal property, or services, for the purpose of aiding or facilitating the work of OGE.

Section 403(b)(2) of the Ethics Act as amended prohibits the acceptance of any gift that attaches conditions inconsistent with applicable laws or regulations. It also prohibits acceptance of any gift that is conditioned upon or will require the expenditure of appropriated funds that are not available to OGE.

Section 403(b)(3) of the Ethics Act as amended requires the Director of OGE to establish written rules that set forth criteria for determining whether the acceptance of a particular gift is appropriate. The statutory standard for this determination is whether acceptance would ''reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.''

The legislative history of the 1996 Reauthorization Act indicates that OGE sought this authority only ''to support OGE's education and training program in carrying out its training mission.'' H.R. Rep. No. 104–595 at 7 (1996) (House Report). See also S. Rep. No. 104–244 at 5 (1996) (Senate Report). However, by its terms the law confers broad gift acceptance authority—similar to that bestowed upon other executive branch agencies—that may be used for any activity that furthers the work of the Office. The 1996 Reauthorization Act requires the Director to promulgate implementing regulations in order to ensure that this grant of broad authority is not used in a manner that would compromise the integrity of OGE or its employees. The House Report states:

> It is the intention of the Committee that these rules will safeguard against not only conflicts of interest, but any appearance of a conflict of interest in the acceptance of gifts by OGE.

House Report at 7. See also Senate Report at 5.

The legislative history further notes that many executive branch agencies and departments that have statutory gift acceptance authority are not required to prescribe rules governing its use:

> Moreover, those agencies and departments that have gift acceptance authority are not required to prescribe regulations governing its use. While other agencies will not be required to follow the example of OGE's regulations in making determinations about their gift acceptance authority, OGE believes that its regulations will provide useful guidance to agencies.

House Report at 7–8. See also Senate Report at 6.

Finally, in the discussion of this legislation on the Senate floor, Senator William Cohen, a sponsor of the Senate bill, noted:

> Currently, other agencies that have gift acceptance authority do not have to prescribe regulations governing its use. While other agencies would not be required to follow the example of OGE's regulations in making their own determinations about their gift authority, OGE's regulations would provide useful guidance to other agencies.

142 Congressional Record S8739, July 24, 1996.

Executive branch agency gift authorities differ widely in their terms. In some cases the authority may be agencywide, while in others it may be limited to a particular component or activity. Some agency authorities permit the acceptance of virtually any kind of gift; others limit gifts to a particular type. Some authorities permit the use of gifts for a broad range of purposes; others limit use of gifts to some particular purpose. The practice with regard to implementing regulations also differs widely among executive branch agencies. Some agencies have comprehensive directives, orders, or policy statements regarding the use of their gift acceptance authority. Other agencies have no written guidelines and make agency gift acceptance determinations on a case-by-case basis.

Although this proposed rule would implement authority that is specific to OGE, it addresses several agency gift acceptance issues of general concern to executive branch agencies. Therefore, it could provide guidance to other agencies in administering their gift authority. In order to develop a final rule that would have the greatest degree of utility in this regard, OGE invites comments by executive branch agencies and other interested persons on this proposed rule, in particular with respect to these issues of more general concern.

As noted above, however, there is great variation among existing agency gift acceptance authorities. Agencies also differ in terms of the frequency and amount of gifts they receive. Agencies also may have gift issues that are unique to their programs and missions. Thus, an agency that wishes to use the OGE rule as a model may need to modify the rule as proposed to meet its particular needs and circumstances.

II. Section-By-Section Analysis

The following section-by-section analysis discusses each section of the new proposed part 2601 regulation.

A. General Provisions

1. Proposed § 2601.101 would set forth the legal authority under section 2 of the Office of Government Ethics Authorization Act of 1996 for the promulgation of this rule.

2. Proposed § 2601.102 would state that the purpose of this rule is to establish written guidelines regarding OGE's implementation of its statutory gift authority.

3. Proposed § 2601.103 would set forth the policies that would guide OGE's interpretation and use of its gift authority. These policies deal with the scope of OGE's gift acceptance authority, permitted uses of gifts, sources of gifts, endorsement issues arising from the agency's acceptance of a gift, and types of gifts.

Proposed § 2601.103(a) would reflect OGE's interpretation that its statutory authority to ''accept and utilize'' gifts embraces the authority to accept, receive, hold, retain, utilize, use, administer, manage, sell, spend, liquidate, and dispose of a gift. It also includes the authority to destroy a gift, provided that such action is otherwise in accordance with Federal regulations, as for example, Federal property management regulations contained in chapters 101 and 102 of 41 CFR.

OGE also interprets the ''accept and utilize'' language as embracing the authority to invest or reinvest gifts. A number of agencies have express statutory language authorizing the agency to invest or reinvest gifts. However, even in the absence of such express language, the authority to ''utilize'' gifts includes the authority to properly manage property obtained by gift. In the case of monetary gifts or the proceeds of the sale of tangible gifts, this would include prudent investment or reinvestment. OGE will invest any available gift funds in interest bearing securities of the United States, as is the customary practice of executive branch agencies.

In addition, OGE interprets the authority to ''accept and utilize'' gifts as encompassing the authority to exchange one tangible gift for another. At least one agency has express statutory authority to ''deal with'' gifts. OGE might, for example, exchange or trade in donated equipment for other more useful equipment. Or, for example, if OGE were given a gift of common stock in a publicly traded company, it could convert that gift of stock to Government securities. OGE believes that such trading or exchange of gifts would be rare. Other Federal entities might have more occasion to exchange or trade gifts. For example, an agency authorized to accept real property might exchange a particular parcel of donated land for another parcel that abuts other land for which the agency is responsible. Or a Federal museum that received gifts of art objects, gems or other items for its collections, or a Federal visitors center that had exhibits, might apply its authority to utilize gifts to trade or exchange a gift for another item that was more appropriate or relevant to its collection.

The authority to ''accept and utilize'' gifts also encompasses the authority to solicit gifts. The legislative history indicates that a primary purpose for granting this authority was to further OGE's training activities. In order to utilize effectively this authority for this purpose, it would be necessary for authorized employees to be able to contact persons who may be able to provide training facilities and services. OGE may also use this authority, *e.g.*, to seek gifts of transportation and travel-related expenses. However, under the regulations as proposed, an employee would not be permitted to engage in an official capacity in activities on behalf of a private entity, to raise funds for future donation to the Office of Government Ethics.

Proposed § 2601.103(b) would state the purposes or activities for which gifts may be used. The statute authorizes OGE to use gifts ''for the purpose of aiding or facilitating the work of the Office of Government Ethics.'' Although support of training activities is expected to be one of the most common uses, OGE envisions that this authority may be used for other activities as well. This is consistent with the broad language of section 403(b)(1) of the Ethics Act.

Although the gift statutes of other agencies use somewhat different language, the various agency authorities describe a link to, or connection with, the work of an agency, its programs, activities or functions. Similarly, OGE interprets the language of ''aiding or facilitating the work of'' OGE to mean that gifts may be utilized to further any activity that has a relationship to the programs, functions or activities of OGE.

Gifts may be used by or for the benefit of OGE employees, provided that such use is otherwise permitted. For example, gifts may be used in accordance with this part as proposed to enhance employee morale or to recruit new employees.

Gifts may also be used for official travel other than travel that is covered by section 1353 of title 31, United States Code. For example, when an OGE employee is engaged in carrying out a core agency function that is outside the scope of section 1353, OGE's statutory authority could be used. See, for example, OGE Informal Advisory Letter 98 x 8 (dealing with acceptance of a gift of ground transportation), which is included in *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics,* as published by the U.S. Government Printing Office, and is also available in the Advisory Opinions section of OGE's Web site at *http://www.usoge.gov.*

Proposed § 2601.103(c) would state OGE policy with regard to the sources from which gifts may be accepted. The Ethics Act does not impose any restriction with regard to any particular source of a gift. The main concern with regard to the source of a gift is raised by a source that would be a ''prohibited source'' for the purpose of gifts to an agency employee. As defined by the statute on gifts to Federal employees, at 5 U.S.C. 7353(a), and OGE's regulation implementing the Standards of Ethical Conduct for executive branch employees, at 5 CFR 2635.203(d), a prohibited source is any person who is seeking official action from, doing business with (or, under the Standards, seeking to do business with), or conducting activities regulated by, the employee's agency, or any person whose interests may be substantially affected by the performance or nonperformance of the employee's official duties. The Standards of Ethical Conduct further clarify that an organization made up of a majority of prohibited sources is itself a prohibited source of gifts. *See* 5 CFR 2635.203(d)(5). Some agencies do bar the acceptance of a gift to the agency from donors who would be considered prohibited sources for gifts to its employees. OGE, however, has determined that barring the acceptance of a gift from a prohibited source or from any other particular class of donors would be unduly restrictive. When a gift is from a prohibited source, there are different considerations if the gift is made to an agency rather than to an individual employee. Accordingly, the identity of the source is evaluated as one key factor in applying the conflict of interest standard to determine whether acceptance of a gift is appropriate. Although the proposed rule would not preclude OGE's acceptance of gifts from prohibited sources, such gifts would be scrutinized to try to ensure that their acceptance would not reflect unfavorably upon OGE or its employees.

Other kinds of sources may also raise special concerns. For example, gifts from intermediaries, including foundations and other organizations, may require additional analysis and evaluation. Although gifts generally should be made directly to OGE, the proposed rule would not preclude gifts from intermediaries. However, where a gift is made through an intermediary, it is relevant to the conflict analysis to consider both the intermediary and the ultimate source of the gift. In addition, the intermediary, such as a foundation or association, may itself be a prohibited source, as noted above, and call for the same degree of scrutiny. Gifts from intermediaries should also be examined in terms of the nature of the conditions that may be attached to the gift. However, rather than bar any source as a class, the proposed rule would resolve these special issues through application of the conflict of interest analysis.

Proposed § 2601.103(d) would state that acceptance of a gift should not in any way be construed to be an endorsement of the donor or the donor's products, services, activities or policies.

Proposed § 2601.103(e) would state that, with the exception of gifts of actual currency, OGE will not preclude the solicitation or acceptance of any kind of gift that is within its authority.

Although OGE's statutory authority does not bar gifts of currency, OGE believes that it is prudent to decline a gift in the form of actual currency. This approach is consistent with that taken by many agencies that have addressed the question in their policy guidelines. The reasons for this self-limitation are the greater risks that currency presents in terms of appearance problems and in terms of accountability of funds. Generally, there should be sufficient time to advise a donor to provide a gift by some alternative to currency, such as by check, by reimbursement of expenses, or by an in-kind gift. This should not unduly limit the use of this authority and will provide greater protection for OGE.

4. Proposed § 2601.104 would set forth the relationship of the authority implemented by this subpart to other authorities that provide for the acceptance of gifts either by OGE or by an OGE employee. The authority that would be implemented by this proposed regulation is general authority for OGE to accept gifts. There are other authorities that are more specific and that provide for the acceptance of gifts by either the agency or by an individual employee in a personal capacity. In some cases, an authority, by law, is the exclusive authority for agency acceptance of a gift. In such a case, that authority would be the exclusive authority for acceptance by the agency. In other cases, a particular authority does not expressly state that it is exclusive. As a matter of policy, however, OGE will utilize the more specific authority for situations in which it is applicable. This would not, however, preclude use of OGE's authority for activities or purposes that are collateral to, or occur in conjunction with, but are not expressly covered by some specific authority.

Proposed § 2601.104(a)(1) would state the relationship of OGE's gift authority to the authority to accept payments made to the agency pursuant to 31 U.S.C. 1353. As mentioned, section 1353 is the exclusive authority by which executive branch agencies can accept certain travel reimbursements relating to an activity that is covered by that statute. Section 1353 applies to any payment ''from non-Federal sources for travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee.'' 31 U.S.C. 1353(a). Implementing regulations of the General Services Administration define the term ''meeting or similar function'' as ''a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station, and is sponsored or cosponsored by a non-Federal source.'' 41 CFR 304–1.2(c)(3).

Where section 1353 is applicable, that statute preempts the use of agency gift acceptance authority. This is made clear by the rules implementing section 1353 at 41 CFR 304–1.8(a), which state that an agency ''may not accept, under an agency gift statute or other similar authority, payment for travel, subsistence, and related expenses incurred by an employee and/or accompanying spouse to attend a meeting or similar function.'' In other words, OGE's gift authority could not be used to accept payments in connection with attendance at a meeting or similar function that is within the scope of section 1353. However, using OGE gift acceptance authority would not be precluded in situations that are not covered by section 1353 that might occur in conjunction with a section 1353 event. Section 1353 does not apply to certain peripheral activities that may occur in connection with a section 1353 activity. Use of OGE gift acceptance authority may be appropriate in such cases, provided there is a connection to some official activity.

Section 1353 does not cover a meeting or other event required to carry out the agency's statutory or regulatory functions. OGE could use its own gift authority to cover transportation and travel related expenses connected with carrying out such core functions. For example, OGE could use its gift authority in conducting a regional ethics training event which would be in furtherance of one of OGE's core functions. Section 1353 also does not cover gifts of transportation when the employee is not in a travel status. OGE could use its authority to accept local transportation for an employee on official duty.

Proposed § 2601.104(a)(2) would state the relationship of this authority to the receipt of gifts of volunteer service accepted by the agency pursuant to 5 U.S.C. 3111. Section 3111 provides for an exception from the prohibition on acceptance of voluntary services contained in 31 U.S.C. 1342. It permits the acceptance of the services of student volunteers who are participating in an agency program established for the purpose of providing educational experiences for the student. The statute and its implementing regulations at 5 CFR part 308 contain criteria that must be met in order to accept student volunteer services.

Proposed § 2601.104(a)(2) provides that the acceptance of services by student volunteers that comes within the authority of 5 U.S.C. 3111 shall be accepted by the agency under that authority. Unlike section 1353, section 3111 does not expressly state that it is the exclusive authority for the acceptance of student volunteer services. However, OGE will use that authority for student volunteer services that are covered by the terms of that statute. On the other hand, OGE authority may be used in cases where the services to be volunteered by a student do not meet the terms of section 3111. For example, a person with more than a five-month interim between school years who would not qualify under the student volunteer program could provide volunteer services under the OGE gift acceptance authority. More importantly, the OGE authority would be available for acceptance of a broad array of other volunteer services that are not covered by the limited scope of section 3111.

There are also a number of authorities under which employees as individuals may accept gifts, such as gifts of training, gifts received from certain foreign governmental entities, and gifts that may be accepted in accordance with the provisions in the Standards of Ethical Conduct. In some cases, a gift

might be accepted either by an individual employee or by the agency. A choice of authorities would then be available.

Proposed § 2601.104(b)(1) would state the relationship of this authority to gifts of training, expenses for training and other benefits made to an employee pursuant to 5 U.S.C. 4111. Section 4111 permits employees to accept payments from certain qualifying organizations without regard to the supplementation of salary restrictions contained in 18 U.S.C. 209. Regulations implementing the statute are found at 5 CFR 410.501–410.503. The regulation at 5 CFR 410.501(b) provides that:

> This subpart does not limit the authority of an agency head to establish procedures on the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart in accordance with laws and regulations governing Government ethics and governing acceptance of travel reimbursements from non-Federal sources.

Thus, in a case where the payment qualifies under section 4111 and is made to an individual employee, OGE's agency gift authority and this proposed regulation would not apply because they concern gifts to the agency. *See also* the gift exception in the Standards of Ethical Conduct, at 5 CFR 2635.204(l)(1), for such gifts. However, section 4111 would not preclude OGE, as an agency, from accepting gifts of training for its employees that were outside the scope of that provision. Where such a gift is made to the agency, this proposed part would apply. Or OGE may elect to use this authority in instances where a gift could not be accepted by an employee because it is outside the scope of section 4111. For example, section 4111 applies only if the source is a tax exempt organization described in section 501(c)(3) of title 26 of the United States Code; other tax exempt organizations (described in other subparagraphs of 26 U.S.C. 501) are not within the scope of section 4111. Moreover, OGE's authority could be used in conjunction with, or as a supplement to, the payments to individual OGE employees for training.

Proposed § 2601.104(b)(2) would state the relationship of this authority to gifts to an agency employee made by a foreign government or organization, or representative thereof, and accepted in accordance with the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. Section 7342 provides an exception by consent of Congress which permits employees to accept certain gifts that would otherwise be barred by the Emoluments Clause of the Constitution (Article I, Section 9, Clause 8). This agency gift acceptance authority would not alter the authority conferred by section 7342; *see also* the gift exception in the Standards of Ethical Conduct, at 5 CFR 2635.204(l)(2), for such gifts.

Proposed § 2601.104(b)(3) would state the relationship of this authority to gifts made to an employee in accordance with the Hatch Act, as revised, in subchapter III of 5 U.S.C. chapter 73. Gifts of meals, lodging, transportation, attendance at events, and other benefits given to an employee who is permitted to accept them under the Hatch Act are accepted by the employee in a personal capacity. This authority would not alter the authority of the Hatch Act; *see also* the gift exception in the Standards of Ethical Conduct, at 5 CFR 2635.204(f), for such gifts.

Proposed § 2601.104(b)(4) would state the relationship of this authority to gifts made to an employee personally that may be accepted under the gift rules of the Standards of Ethical Conduct, as codified at subparts B and C of 5 CFR part 2635. Whenever a gift is accepted by an employee personally pursuant to any particular gift exception, this part does not apply. There may be situations where alternatively the gift could be made to the agency; in such a case, the OGE gift authority might apply. For example, the sponsor of a conference at which an OGE employee is a speaker might give the OGE employee a book about ethics in government (with a market value of $20 or less), which the OGE employee could accept under the gift exception in the Standards of Ethical Conduct, at 5 CFR 2635.204(a), for such gifts.

Alternatively, the sponsor of the conference might give the book to OGE, for OGE to place in its library.

5. Proposed § 2601.105 would set forth definitions applicable to this part.

Proposed § 2601.105 would define the term ''Administration Division'' to mean the Administration Division of the Office of Government Ethics.

Proposed § 2601.105 would define the term ''agency'' to mean the Office of Government Ethics (OGE).

Proposed § 2601.105 would define the term ''authorized agency official'' to mean the Director or the Director's delegatee.

Proposed § 2601.105 would define the terms ''Director'' to mean the Director of OGE, and the term ''employee'' to mean an employee of OGE.

Proposed § 2601.105 would define the term ''gift.'' The definition would follow the definition set forth in the Act. Particular categories of gifts referenced in the definition in the Act are proposed to be further defined.

Proposed § 2601.105 would define ''money'' to include currency, checks, money orders or other forms of negotiable instruments. Note that although the Act authorizes the acceptance of money without limitation, as a matter of policy as set forth in proposed § 2601.103(e), OGE would not accept gifts of currency.

Proposed § 2601.105 would define ''personal property.'' The definition of personal property is intended to cover all forms of personal property. It would include both tangible and intangible property. Some of the types of tangible personal property that might be accepted by OGE would include books, videotapes, training media, electronic training games and other educational materials, office and other supplies, as well as equipment such as computers, printing and copying equipment, cameras and recording equipment, visual and graphics materials, and exhibits. The definition would also cover tangible gifts of consumable or perishable products. The definition would also cover all forms of intangible property, including securities, options and warrants. It would also cover, for example, permission to use copyrighted material without payment of a fee. An example of such use would be use of music or visual material in the production of ethics training videos.

Proposed § 2601.105 would define ''prohibited source'' by referencing the definition contained in the Standards of Ethical Conduct, at 5 CFR 2635.203(d).

Proposed § 2601.105 would define ''services'' to cover virtually any type of personal service. Some typical types of services that OGE might expect to accept and use as furthering the work of the agency would include communication-related services to conduct training. These might include broadcast studio services, technicians, and global uplink technicians in connection with training via satellite broadcasts. Training might also call for audio visual services, design and graphics services, and planning services. For retreats, this authority could be used to accept gifts of the services such as motivational speakers or management consultants. Other professional services such as instructional, consulting and advisory services might also be accepted. In connection with a conference, there might be a gift of food and catering services.

Proposed § 2601.105 would also define ''use of facilities'' to encompass every type of use of facility. It would cover, for example, the use of space such as a hotel ballroom or lodging, conference center, retreat center,

conference room, auditorium, seminar or classroom, banquet room or other meeting or training space. It would also include the use of exhibit space, storage facilities, and broadcast or production studios. Use of facilities would also encompass use of the equipment associated with the facility, such as video production equipment and satellite broadcasting equipment.

B. Guidelines for Acceptance

1. Proposed § 2601.201 would provide for delegation of the OGE Director's general authority to solicit, accept, and utilize gifts.

2. Proposed § 2601.202 would set forth the procedures for handling gift offers.

Proposed § 2601.202(a) would provide that only an authorized agency official shall have the authority to solicit, accept, refuse, return or negotiate the terms of a gift.

Proposed § 2601.202(b) would provide that OGE employees who are not authorized to accept a gift are to forward all gift offers to an authorized agency official. Agency employees could respond to potential donors and inform them of OGE's gift authority but they should not engage in further discussions of the possibility of a gift without direction from an authorized agency official. OGE employees may also put a potential donor in touch with an authorized agency official. In any event, employees must not make any commitments to extend preferential treatment to any potential donor in connection with a gift offer.

Proposed § 2601.202(c) would provide that while gifts generally may be solicited or accepted only after an evaluation has been made under the conflict of interest standard of § 2601.203 as proposed, in exceptional circumstances, a gift in-kind could be accepted prior to an evaluation under the conflict standard. An example of such a situation might be an employee on official travel in a remote location who is offered a gift of local transportation. Although it would be preferable to anticipate such situations and make appropriate arrangements in advance, exceptional circumstances may warrant subsequent authorization. If subsequent authorization is determined not to be appropriate, then it may be necessary to return the gift, or make reimbursement to the donor.

Proposed § 2601.202(d) would provide that gifts may be acknowledged in writing in the form of a letter of acknowledgment, and describes the contents of such a letter to a donor or an intermediary. Gifts to the agency are considered gifts to the United States for the purposes of Federal tax laws. Sections 170(c)(1), 2055, and 2522, respectively, of title 26 of the United States Code establish the status of such gifts for purposes of Federal income, gift, and estate taxes. The tax consequences or implications of any gift transaction are the responsibility of the donor. Therefore, donors should consult their own tax professionals for specific advice on permissible deductions. OGE will not estimate or place any value on a nonmonetary gift, for tax purposes.

Proposed § 2601.202(e) would provide that gifts may be declined orally or in writing. Donors generally may be advised of the reason for declining the gift but a gift may be declined solely as a matter of discretion.

Proposed § 2601.202(f) would provide that gifts of money (other than currency) and proceeds shall be placed in an OGE trust fund account. The Act does not specify where funds should be held when they are not being utilized. But following the practice of other executive branch agencies, OGE would establish the trust fund account through the Department of the Treasury. Disbursements would be available from the account upon order of OGE without fiscal year limitations.

3. Proposed § 2601.203 would set forth the analysis to be used for making the determination required by the Act as to whether the solicitation or acceptance of a gift would reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

Proposed § 2601.203(a) would restate the language of the Act that sets forth the standard for determining whether it is appropriate for OGE to solicit or accept a gift.

Proposed § 2601.203(b) would provide a list of factors to be considered in making the determination as to whether solicitation or acceptance of a gift would be appropriate under this standard. The first of these factors, at proposed § 2601.203(b)(1), would require an evaluation of the identity of the source of the gift. As noted above, the proposed rule does not prohibit the solicitation or acceptance of gifts from any particular type of source, including persons who would be considered ''prohibited sources'' of gifts to agency employees. Evaluation of the source of the gift nonetheless is a critical element in the analysis of whether a gift may be solicited or accepted.

The second factor, in proposed § 2601.203(b)(2), would require an evaluation of the estimated market value or cost to the donor of a gift, or the amount if it is a gift of money.

The third factor, in proposed § 2601.203(b)(3), would require an evaluation of the donor's stated purpose of the gift.

The fourth factor, in proposed § 2601.203(b)(4), would require an evaluation of any other expected recipients of the gift on the same occasion. This may be particularly relevant in activities with a number of sponsors. Identifying other recipients can avoid situations that might reflect unfavorably upon the agency.

The fifth factor, in proposed § 2601.203(b)(5), would require an evaluation of the timing of the gift, to avoid situations that might reflect unfavorably upon OGE. Evaluation of timing is also necessary in order to avoid any impression that the agency is pressuring a potential donor to make a gift.

The sixth factor, in proposed § 2601.203(b)(6), would require an evaluation of any matter pending at OGE that might affect the interests of the donor. In addition to actual pending matters, it is relevant to consider any anticipated dealings between the agency and the donor and the significance of those dealings to a potential donor's revenues or business.

The seventh factor, in proposed § 2601.203(b)(7), would require an evaluation of the significance of an individual employee's role in any matter affecting the donor, if benefits of the gift will accrue to that employee.

The eighth factor, in proposed § 2601.203(b)(8), would require an evaluation of the nature or character of a gift. If it is a gift in-kind, then the nature of the gift must be evaluated. Because this part as proposed would not prohibit any particular type of gift (other than gifts of currency), evaluation of the nature of the gift is important.

The ninth factor, in proposed § 2601.203(b)(9), would require an evaluation of the frequency of gifts from the same source. Frequent gifts could create an appearance of a relationship between the agency and the donor as part of which favors might be granted.

The tenth factor, in proposed § 2601.203(b)(10), would require an evaluation of whether the purpose of the gift aids or facilitates the work of OGE, consistent with the terms of the statutory authority for OGE to accept gifts.

Proposed § 2601.203(c) would note that the agency may request additional information from the donor to assist in

determining whether acceptance is appropriate.

4. Proposed § 2601.204 would set forth the conditions for acceptance of gifts.

Proposed § 2601.204(a)(1) would restate the language of the Act that provides that no gift may be accepted that attaches conditions inconsistent with applicable laws or regulations. This prohibition would not bar acceptance of a gift that was donated for a specific purpose as, for example, to support OGE training. Nor would the fact that a donor expressed some nonbinding preference as to how the donor wished a gift be used preclude acceptance.

Proposed § 2601.204(a)(2) would restate the language of the Act that provides that no gift may be accepted that is conditioned upon or will require the expenditure of appropriated funds that are not available to OGE.

Proposed § 2601.204(a)(3) would bar acceptance of a gift that is given in exchange or return for some privilege, concession or other present or future benefit. Such an exchange could imply that the gift would compromise the integrity of the agency's programs.

Proposed § 2601.204(a)(4) would bar acceptance of a gift that would require OGE to adhere to particular requirements as to deposit, investment, or management of funds donated.

Proposed § 2601.204(a)(5) would bar acceptance of a gift that would require OGE to undertake activities that are not related to the agency's mission, programs or statutory authority.

Proposed § 2601.204(a)(6) would bar acceptance of a gift that would reflect unfavorably upon the ability of the agency, or any of its employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

C. Accounting Requirements

Proposed § 2601.301 would set forth guidance for the accounting of gifts. Accounting requirements may help ensure that OGE's gift acceptance authority is used in a way that does not reflect unfavorably on OGE or its employees.

Proposed § 2601.301(a) would provide for the regular accounting of gifts received. Money gifts must be accounted for under the same standards as are applicable to appropriated funds.

Proposed § 2601.301(b) would require OGE to maintain an inventory of donated personal property valued at over $500.

Proposed § 2601.301(c) would require OGE to maintain a log of accepted gifts valued at over $500.

The proposed rule does not expressly provide for any type of regular audit of gift funds. Some agencies provide for audits at such intervals as the Comptroller General, in his discretion, deems to be appropriate. Given the size of OGE and the expected relatively low volume of gifts, it is not believed that it is necessary to provide for any regular audit. Such audits could, however, be done as appropriate.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before August 4, 2003. The Office of Government Ethics will review all comments received and consider any modifications to this proposal which appear warranted in issuing its final rule.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects OGE itself and OGE employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 12866

In issuing this proposed regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under that Executive order since it is not a significant regulatory action within the meaning of the Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2601

Conflict of interests, Government employees, Government property.

Approved: April 28, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to add a new part 2601 to 5 CFR to read as follows:

PART 2601—IMPLEMENTATION OF OFFICE OF GOVERNMENT ETHICS STATUTORY GIFT ACCEPTANCE AUTHORITY

Subpart A—General Provisions

Sec.
2601.101 Authority.
2601.102 Purpose.
2601.103 Policy.
2601.104 Relationship to other authorities.
2601.105 Definitions.

Subpart B—Guidelines for Solicitation and Acceptance of Gifts

2601.201 Delegation.
2601.202 Procedure.
2601.203 Conflict of interest analysis.
2601.204 Conditions for acceptance.

Subpart C—Accounting Requirements

2601.301 Accounting of gifts.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2601.101 Authority.

Section 2 of the Office of Government Ethics Authorization Act of 1996, amending the Ethics in Government Act of 1978, as codified at 5 U.S.C. app. § 403(b), authorizes the Office of Government Ethics (OGE) to accept and utilize gifts for the purpose of aiding or facilitating the work of OGE.

§ 2601.102 Purpose.

The purpose of this part is to establish guidelines governing the implementation of OGE's gift authority by defining its scope and application, by prescribing the policies, standards and procedures that govern the solicitation, acceptance and use of gifts, and by setting forth accounting requirements related to the use of this authority.

§ 2601.103 Policy.

(a) *Scope.* The Office of Government Ethics may use its statutory authority to solicit, accept and utilize gifts to the agency that aid or facilitate the agency's work. The authority to solicit, accept and utilize gifts includes the authority to receive, administer, spend, invest and dispose of gifts. Gifts to the agency from individuals or organizations can be a useful adjunct to appropriated funds and may enhance the agency's ability to fulfill its mission, as well as further mutually beneficial public/private partnerships, or other useful arrangements or relationships. Such uses of this authority are appropriate provided that solicitation or acceptance of a gift does not compromise the integrity of OGE, its programs or employees.

(b) *Use of gifts.* Gifts to OGE may be used to carry out any activity that furthers the mission, programs, responsibilities, functions or activities of the agency. Gifts may be used to carry out program functions whether or not appropriated funds are available for that purpose, provided that such expenditures are not barred by law or regulation. Gifts may also be used for official travel by employees to events or activities required to carry out the agency's statutory or regulatory functions. Gifts to the agency may also be used for the travel expenses of spouses accompanying employees on official travel, if such travel could be paid for by appropriated funds.

(c) *Sources.* Generally, gifts may be solicited or accepted from any source, including a prohibited source, provided that the standards of this part are met. Gifts generally should be made directly to the agency and not through intermediaries. However, where a gift is offered by an intermediary, both the intermediary and the ultimate source of the gift should be analyzed to determine whether acceptance would be appropriate.

(d) *Endorsement.* Acceptance of a gift pursuant to this part shall not in any way be deemed to be an endorsement of the donor, or the donor's products, services, activities, or policies. Letters to a donor expressing appreciation of a gift are permitted.

(e) *Type of gift.* The agency may solicit or accept any gift that is within its statutory authority. However, as a matter of policy, OGE will not solicit or accept gifts of currency pursuant to this part. Donors who offer currency should be advised that the gift may be made by check or money order payable to the U.S. Office of Government Ethics.

§ 2601.104 Relationship to other authorities.

(a) This part does not apply to gifts to the agency of:

(1) Travel and travel-related expenses made pursuant to the authority set forth in 31 U.S.C. 1353; or

(2) Volunteer services made pursuant to the authority set forth in 5 U.S.C. 3111.

(b) This part does not apply to gifts to an individual agency employee, including:

(1) Gifts of contributions, awards or other expenses for training made pursuant to the authority set forth in the Government Employees Training Act, 5 U.S.C. 4111;

(2) Gifts made by a foreign government or organization, or representative thereof, pursuant to the authority set forth in 5 U.S.C. 7342;

(3) Gifts made by a political organization that may be accepted by an agency employee who, in accordance with the terms of the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns; or

(4) Gifts made directly or indirectly that an employee may accept in a personal capacity pursuant to the authority set forth in 5 CFR part 2635, subpart B or subpart C.

§ 2601.105 Definitions.

For the purposes of this part:

Administration Division means the Administration Division of the Office of Government Ethics.

Agency means the Office of Government Ethics (OGE).

Authorized agency official means the Director of the Office of Government Ethics or the Director's delegatee.

Director means the Director of the Office of Government Ethics.

Employee means an employee of the Office of Government Ethics.

Gift means any gift, donation, bequest or devise of money, use of facilities, personal property, or services and may include travel reimbursements or payments for attendance at or participation in meetings or events.

Money means currency, checks, money orders or other forms of negotiable instruments.

Personal property means all property, tangible or intangible, not defined as real property, and includes stocks and bonds.

Prohibited source means any source described in 5 CFR 2635.203(d).

Services means all forms of voluntary and uncompensated personal services.

Use of facilities means use of space, equipment and all other facilities.

Subpart B—Guidelines for Acceptance

§ 2601.201 Delegation.

(a) The authority to solicit, accept, and utilize gifts in accordance with this part resides with the Director.

(b) The Director may delegate this authority.

(c) Authorities delegated in accordance with paragraph (b) of this section may be redelegated only through a written delegation authorizing an agency employee to solicit or accept specific types of gifts, or a gift for a specific purpose, function, or event.

§ 2601.202 Procedure.

(a) The authorized agency official shall have the authority to solicit, accept, refuse, return, or negotiate the terms of acceptance of a gift.

(b) An employee, other than an authorized agency official, shall immediately forward all offers of gifts covered by this part regardless of value to an authorized agency official for consideration and shall provide a description of the gift offered. An employee shall also inform an authorized agency official of all discussions of the possibility of a gift. An employee shall not provide a donor with any commitment, privilege, concession or other present or future benefit (other than an appropriate acknowledgment) in return for a gift.

(c) Only an authorized agency official may solicit, accept or decline a gift after making the determination required under the conflict of interest standard in § 2601.203. An authorized agency official may find that, while acceptance of an offered gift is permissible, it is in the interest of the agency to qualify acceptance by, for example, limiting the gift in some way. Approval of acceptance of a gift in-kind after receipt of the gift may be granted as deemed appropriate by the authorized agency official.

(d) Gifts may be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift shall be specified. In the case of nonmonetary gifts, the letter shall not make reference to the value of the gift. Valuation of nonmonetary gifts is the responsibility of the donor. Letters

of acceptance shall not include any statement regarding the tax implications of a gift, which remain the responsibility of the donor. No statement of endorsement should appear in a letter of acceptance to the donor.

(e) A gift may be declined by an authorized official orally or in writing. A donor may be advised of the reason why the gift has been declined. A gift may be declined solely as a matter of agency discretion, even though acceptance would not be precluded under the conflict of interest standard in § 2601.203.

(f) A gift of money or the proceeds of a gift shall be deposited in an appropriately documented agency fund. A check or money order should be made payable to the ''U.S. Office of Government Ethics.''

§ 2601.203 Conflict of interest analysis.

(a) A gift shall not be solicited or accepted if the authorized agency official determines that such solicitation or acceptance of the gift would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out OGE responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) In making the determination required under paragraph (a) of this section, an authorized agency official may be guided by all relevant considerations, including, but not limited to the following:

(1) The identity of the donor;

(2) The monetary or estimated market value or the cost to the donor;

(3) The purpose of the gift as described in any written statement or oral proposal by the donor;

(4) The identity of any other expected recipients of the gift on the same occasion, if any;

(5) The timing of the gift;

(6) The nature and sensitivity of any matter pending at the agency affecting the interests of the donor;

(7) The significance of an individual employee's role in any matter affecting the donor, if benefits of the gift will accrue to the employee;

(8) The nature of the gift offered;

(9) The frequency of other gifts received from the same donor; and

(10) The agency activity, purpose or need that the gift will aid or facilitate.

(c) An authorized agency official may ask the donor to provide in writing any additional information needed to assist in making the determination under this section. Such information may include a description of the donor's business or organizational affiliation and any matters that are pending or are expected to be pending before the agency.

§ 2601.204 Conditions for acceptance.

(a) No gift may be accepted that:

(1) Attaches conditions inconsistent with applicable laws or regulations;

(2) Is conditioned upon or will require the expenditure of appropriated funds that are not available to the agency;

(3) Requires the agency to provide the donor with some privilege, concession or other present or future benefit in return for the gift;

(4) Requires the agency to adhere to particular requirements as to deposit, investment, or management of funds donated;

(5) Requires the agency to undertake or engage in activities that are not related to the agency's mission, programs or statutory authorities; or

(6) Would reflect unfavorably upon the ability of the agency, or any of its employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

Note to § 2601.204: Nothing in this part shall prohibit the agency from offering or providing the donor an appropriate acknowledgment of its gift in a publication, speech or other medium.

Subpart C—Accounting Requirements

§ 2601.301 Accounting of gifts.

(a) The Administration Division shall ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures.

(b) The Administration Division shall maintain an inventory of donated personal property valued at over $500. The inventory shall be updated each time an item is sold, excessed, destroyed or otherwise disposed of or discarded.

(c) The Administration Division shall maintain a log of all gifts valued at over $500 accepted pursuant to this part. The log shall include, to the extent known:

(1) The name and address of the donor;

(2) A description of the gift; and

(3) The date the gift is accepted.

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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:			
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[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.

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