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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA82

Fees for Rice Inspection Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing an approximate 4.1 percent increase in fees for all hourly rates and certain unit rates for inspection services performed under the Agricultural Marketing Act (AMA) of 1946 in the rice inspection program. These increases are needed to cover increased operational costs resulting from the mandated January 2003 Federal pay increase.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *David.M.Orr@.usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This final rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, Donna Reifschneider, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate and continues to seek cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The mandated January 2003 general and locality salary increase that averages 4.1 percent for all GIPSA employees has increased program costs in the rice inspection program.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In Fiscal Year (FY) 2000, operating costs in the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. In FY 2002, operating costs in the rice program were $3,882,574 with revenue of $3,885,121 that resulted in a positive margin of $2,547 and a positive reserve of $311,596. The current positive reserve balance of $311,596 is below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that it cannot absorb the increased costs caused by the 4.1 percent salary increase with the small positive reserve balance. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

This fee increase applies primarily to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the increase will not be excessive (4.1 percent) and should not significantly affect those entities. Those entities are under no obligation to use GIPSA's service and, therefore, any decision on their part to discontinue the use of service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this final action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and record keeping requirements in part 868 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final action is not intended to have a retroactive effect. This final action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

In the February 28, 2003, **Federal Register** (68 FR 9593) GIPSA proposed an approximate 4.1 percent increase in fees for rice inspection services performed under the Agricultural Marketing Act of 1946. Under the provisions of the AMA (7 U.S.C. 1621, *et seq.*), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203 (h) of the AMA (7 U.S.C. 1622 (h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual

services, supplies, and equipment. The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In FY 2000, operating costs in the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. In FY 2002, operating costs in the rice program were $3,882,574 with revenue of $3,885,121 that resulted in a positive margin of $2,547 and a positive reserve of $311,596. The current positive reserve balance of $311,596 is below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of its rice inspection program based on the projected increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that with the small positive reserve balance it cannot absorb the increased costs caused by the 4.1 percent salary increase. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

In 7 CFR 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates, currently the regular workday contract and noncontract fees are $44.60 and $54.30, respectively, while the nonregular workday contract and noncontract fees are $61.80 and $75.00, respectively. The unit rate per hundredweight for export port services is currently $0.054 per hundredweight. The rice inspection programs current unit rates are:

Service	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.80	$30.00	$21.50
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.00	27.00	.....
(b) All other factors (per factor)	12.90	12.90	12.90
Total oil and free fatty acid	.....	42.60	42.60
Interpretive line samples:			
(a) Milling degree (per set)	.....	.....	91.00
(b) Parboiled light (per sample)	.....	.....	22.60
Extra copies of certificates (per copy)	3.00	3.00	3.00

Comment Review

GIPSA received no comments in response to the proposed rulemaking published February 28, 2003, in the **Federal Register** at (68 FR 9593).

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the service rendered. These fees cover the GIPSA costs, including administrative and supervisory costs, for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

■ For reasons set out in the preamble, 7 CFR part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

■ 1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087 as amended (7 U.S.C. 1621, *et seq.*)

■ 2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1—HOURLY RATES/UNIT RATE PER CWT.

[Fees for Federal Rice Inspection Services]

Service [1]	Regular Workday (Monday–Saturday)	Nonregular Workday (Sunday–Holiday)
Contract (per hour per Service representative)	$46.40	$64.40
Noncontract (per hour per Service representative)	56.60	78.00
Export Port Services (per hundredweight)[2]	.056	.056

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$35.50	$30.50	$22.00
Factor analysis for any single factor (per factor):			

TABLE 2.—UNIT RATES—Continued

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
(a) Milling yield (per sample)	27.50	27.50	.....
(b) All other factors (per factor)	13.20	13.20	13.20
Total oil and free fatty acid	.....	43.00	43.00
Interpretive line samples:[2]			
(a) Milling degree (per set)	.....	.....	94.00
(b) Parboiled light (per sample)	.....	.....	23.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, D.C. 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.90, Table 1.

Dated: May 6, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–11595 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–48–AD; Amendment 39–13107; AD 2003–07–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–07–11, applicable to Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH), models BR700–710A1–10 and BR700–710A2–20 turbofan engines. AD 2003–07–11 was published in the **Federal Register** on April 11, 2003 (68 FR 17727). Subsequently, a correction document was published in the **Federal Register** on April 23, 2003 (68 FR 19944) that made corrections to the compliance section starting at paragraph (g). This document corrects paragraph (f) of the compliance section that incorrectly references cycles instead of hours. This document changes cycles to hours in paragraph (f). In all other respects, the original document, with the corrections published on April 23, 2003, remains the same.

EFFECTIVE DATE: April 28, 2003.

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: A final rule; request for comments airworthiness directive FR DOC. 03–8327, applicable to Rolls-Royce Deutschland Ltd & Co KG models BR700–710A1–10 and BR700–710A2–20 turbofan engines, was published in the **Federal Register** on April 11, 2003 (68 FR 17727). The following correction is needed:

■ On page 17729, in the second column, under Repetitive Inspections heading, paragraph (f), third line, which reads ''500 CSN, in accordance with paragraphs'' is corrected to read ''500 hours-since-new, in accordance with paragraphs''.

Issued in Burlington, MA, on May 2, 2003.

Francis A. Favara,

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

[FR Doc. 03–11537 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–44–AD; Amendment 39–13142; AD 2003–09–13]

RIN 2120–AA64

Airworthiness Directives; the New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes that do not incorporate a certain design flap control torque tube or torque tube assembly. This AD requires you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage); and requires you to replace any damaged torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections will no longer be necessary when the improved design torque tube or torque tube assembly is installed. This AD is the result of several reports of damage found in the flap control torque tube on the affected airplanes. The actions specified by this AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition

could occur with potential loss of control of the airplane.

DATES: This AD becomes effective on June 23, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 23, 2003.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–44–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: Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

A review of FAA's service difficulty report (SDR) database shows several incidents of cracks and corrosion in the flap control torque tube on Piper PA–23 series airplanes. One incident of a broken flap control torque tube resulted in a split flap condition during approach.

What Is the Potential Impact if FAA Took No Action?

Cracked or corroded flap torque tubes, if not detected and corrected, could result in damage to the flap control torque tube and failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes that do not incorporate a certain design flap control torque tube or torque tube assembly. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 27, 2003. The NPRM proposed to require you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes; and would require you to replace any damaged flap control torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections would no longer be necessary when the improved design flap control torque tube or flap control torque tube assembly is installed.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

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.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 3,733 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480.	None for inspection	$480 per airplane	$1,791,840.

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

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$452 per airplane	$692 per airplane.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 AD to read as follows:

2003–09–13 The New Piper Aircraft, Inc.: Amendment 39–13142; Docket No. 2002–CE–44–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not incorporate a part number (P/N) 17634–002 flap control torque tube; or a P/N 104622–002 or 104622–004 flap control torque tube assembly:

Model	Serial numbers
PA–23 and PA–23–160	23–1 through 23–2046.
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 through 27–504 and 27–2000 through 27–8154030.
PA–E23–250	27–2505 through 27–4916 and 27–7304917 through 27–7554168.

(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 detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage).	Initially inspect upon accumulating 2,500 hours time-in-service (TIS) on the flap control torque tube or within the next 100 hours TIS after June 23, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours TIS until a replacement flap control torque tube or flap control torque tube assembly specified in paragraph (d)(2) of this AD is installed.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(2) Replace any damaged flap control torque tube and replace any wooden end plugs with new plastic end plugs, P/N 17631–002. Replace the flap control torque tubes with either a P/N 17634–002 flap control torque tube or a P/N 104622–002 or 104622–004 flap control torque tube assembly. (i) The P/N 17631–002 end plugs are part of the P/N 104622–002 and 104622–004 flap control torque tube assemblies, but must be obtained for the P/N 17634–002 installation. (ii) You do not have to inspect the existing wooden end plugs as specified in the service bulletin since this AD requires the installation of plastic end plugs.	Prior to further flight after the inspection where damage is found.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(3) The repetitive inspections required by this AD may be terminated after installation of a replacement flap control torque tube or flap control torque tube assembly as specified in paragraph (d)(2) of this AD.	You may replace the flap control torque tube assembly at any time, but must replace prior to further flight if damage is found during an inspection.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office. For information on any already approved alternative methods of compliance, contact Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta,

Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piper Mandatory Service Bulletin No. 1051B, dated November 5, 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 may get copies from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may view copies at the 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 June 23, 2003.

Issued in Kansas City, Missouri, on April 30, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–11265 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA–2003–14611; Airspace Docket No. 03–AWA–4]

Establishment of Area Navigation Routes (RNAV)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Area Navigation Routes (RNAV) as part of the National Airspace System (NAS). The FAA is implementing these routes to enhance safety and to improve the efficient use of the navigable airspace.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Historically, the principal means of air navigation for instrument flight rules (IFR) operations in the United States National Airspace System (NAS) has been a system of ground-based navigation aids (NAVAIDs) (*e.g.,* nondirectional beacon (NDB), very high frequency omnidirectional range (VOR), and distance measuring equipment (DME)). Airways were subsequently developed according to these NAVAIDs, and pilots were required to fly directly toward or away from them. This limitation in the NAS has resulted in less-than-optimal routes, and contributed to the inefficient use of the airspace.

The advent of area navigation (RNAV) in the 1960's, provided enhanced navigation capabilities to the pilot. Early RNAV allowed properly equipped aircraft to navigate via a user-defined track, rather than depending primarily on ground-based NAVAIDs. Early RNAV systems, however, still relied on signals from a ground-based NAVAID for source information to calculate navigational position. In the 1970's, to take advantage of this improved navigation capability, the FAA began to publish a series of routes for use by RNAV-equipped aircraft. A nationwide system of high-altitude RNAV routes was established consisting of approximately 156 route segments.

These fixed routes, however, still depended on information from ground-based NAVAIDs. The FAA later determined that most aircraft using RNAV in the en route system, were doing so on a random basis using inertial navigation systems (INS) (with little use being made of the fixed high altitude RNAV route structure). Operators were using RNAV from point to point, not with the high-altitude RNAV route structure designed and published by the FAA. This minimal use of the charted RNAV routes proved insufficient to justify their retention on a cost-benefit basis. As a result, in January 1983, the FAA revoked all high altitude RNAV routes in the conterminous United States (46 FR 848). The RNAV routes in Alaska were retained and remain in use today because of the scarcity of ground-based navigational aids in that region.

The technology that evolved over the past 40 years gave avionics systems increased positional accuracy, which provided users with a greater ability to fly direct routes between any two points. In recent years, satellite navigation using the Global Positioning System (GPS) has provided even greater flexibility in defining routes, establishing instrument procedures, and designing airspace. When GPS is combined with existing RNAV system capabilities, continuous course guidance is available over longer routes than is possible with ground-based NAVAIDs. As a result of these technological advances, the FAA has implemented a number of RNAV routes on a test basis for use by air carriers operating suitably equipped aircraft in the northeast, southeast, and southwest regions of the United States. The results so far have demonstrated the potential of these RNAV routes, when used with newer navigation reference sources such as GPS.

As part of the on going National Airspace Redesign, the FAA has implemented the High Altitude Redesign (HAR) Program. This specific effort looks at how best to obtain maximum system efficiency by introducing advanced RNAV routes for use by suitably equipped aircraft. Under the first phase of HAR, 11 RNAV routes are being established in the high altitude structure. These new routes will allow users to begin achieving the economic benefits of flying their preferred routes and altitudes with fewer routing restrictions.

Related Rulemaking

On April 8, 2003, the FAA published the Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points in the **Federal Register** [68 FR 16943]. This rule adopted certain amendments proposed in Notice No. 02–20, Area Navigation (RNAV) and Miscellaneous Amendments. This action revised and adopted several definitions in FAA regulations, including Air Traffic Service routes, to be in concert with International Civil Aviation Organization (ICAO) definitions; and reorganized the structure of FAA regulations concerning the designation of class A, B, C, D, and E airspace areas; airways; routes, and reporting points.

The U.S. and Canada have been assigned the alphanumeric ''Q'' as a designator for RNAV routes (U.S. 1–499/ Canada 500–999). RNAV routes between, and within, Canada and the U.S. will use the ''Q'' designator.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by establishing RNAV routes as part of the NAS. These routes are designed to provide safe and efficient use of the navigable airspace, and to promote safe flight operations under instrument flight rules (IFR) within the NAS.

The complete regulatory criteria on each RNAV route is contained in the appropriate FAA Form 8260. The RNAV routes described in this rule will also be published in a new paragraph (paragraph 2006) of FAA Order 7400.9K dated August 30, 2002, effective

September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the order.

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. Therefore, this regulation: (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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

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 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 the 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 2006(a)—AREA NAVIGATION ROUTES

* * * * * * *

Q–1 ELMAA to PYE [New]

ELMAA	Fix	(Lat. 47°08′53″ N., long. 123°24′35″ W.)
ERAVE	WP	(Lat. 46°54′35″ N., long. 123°24′06″ W.)
EASON	WP	(Lat. 44°30′00″ N., long. 123°19′44″ W.)
EBINY	WP	(Lat. 42°28′50″ N., long. 123°15′01″ W.)
ENVIE	WP	(Lat. 41°20′09″ N., long. 123°12′32″ W.)
ETCHY	WP	(Lat. 39°05′28″ N., long. 123°08′05″ W.)
PYE	VOR	(Lat. 38°04′47″ N., long. 122°52′04″ W.)

Q–3 FEPOT to PYE [New]

FEPOT	WP	(Lat. 47°04′51″ N., long. 123°13′08″ W.)
FAMUK	WP	(Lat. 44°30′00″ N., long. 123°08′09″ W.)
FRFLY	WP	(Lat. 42°28′50″ N., long. 123°03′57″ W.)
FINER	WP	(Lat. 41°20′09″ N., long. 123°01′45″ W.)
FOWND	WP	(Lat. 39°05′46″ N., long. 122°57′48″ W.)
PYE	VOR	(Lat. 38°04′47″ N., long. 122°52′04″ W.)

Q–5 HAROB to STIKM [New]

HAROB	WP	(Lat. 47°14′36″ N., long. 123°02′27″ W.)
HISKU	WP	(Lat. 44°30′00″ N., long. 122°56′39″ W.)
HARPR	WP	(Lat. 42°28′50″ N., long. 122°53′02″ W.)
HOMEG	WP	(Lat. 41°20′09″ N., long. 122°51′05″ W.)
HUPTU	WP	(Lat. 39°30′00″ N., long. 122°44′39″ W.)
STIKM	WP	(Lat. 38°32′00″ N., long. 122°39′00″ W.)

Q–7 JINMO to AVE [New]

JINMO	WP	(Lat. 46°22′17″ N., long. 122°07′31″ W.)
JOGEN	WP	(Lat. 44°19′44″ N., long. 121°39′04″ W.)
JUNEJ	WP	(Lat. 41°00′06″ N., long. 120°55′06″ W.)
JAGWA	WP	(Lat. 37°19′49″ N., long. 120°38′18″ W.)
AVE	VORTAC	(Lat. 35°38′49″ N., long. 119°58′43″ W.)

Q–9 SUMMA to DERBB [New]

SUMMA	Fix	(Lat. 46°37′04″ N., long. 121°59′18″ W.)
SMIGE	WP	(Lat. 43°50′46″ N., long. 121°20′45″ W.)
SUNBE	WP	(Lat. 41°00′14″ N., long. 120°44′32″ W.)
REBRG	WP	(Lat. 35°58′53″ N., long. 119°36′53″ W.)
DERBB	Fix	(Lat. 35°15′21″ N., long. 119°38′29″ W.)

Q–11 PAAGE to LAX [New]

PAAGE	WP	(Lat. 46°25′22″ N., long. 121°44′44″ W.)
PAWLI	WP	(Lat. 43°10′48″ N., long. 120°55′50″ W.)
PITVE	WP	(Lat. 41°00′14″ N., long. 120°24′57″ W.)
PUSHH	WP	(Lat. 38°18′53″ N., long. 119°36′40″ W.)
LAX	VORTAC	(Lat. 33°55′59″ N., long. 118°25′55″ W.)

PARAGRAPH 2006(a)—AREA NAVIGATION ROUTES—Continued

Q–13 PAWLI to LIDAT [New]		
PAWLI	WP	(Lat. 43°10′48″ N., long. 120°55′50″ W.)
RUFUS	WP	(Lat. 41°26′00″ N., long. 120°00′00″ W.)
LOMIA	WP	(Lat. 39°13′12″ N., long. 119°06′23″ W.)
LIDAT	Fix	(Lat. 37°25′49″ N., long. 117°16′41″ W.)
Q–501 SOBME to VIXIS [New]		
SOBME	WP	(Lat. 44°58′24″ N., long. 97°40′44″ W.)
GEP	VORTAC	(Lat. 45°08′45″ N., long. 93°22′24″ W.)
VIXIS	Fix	(Lat. 44°20′07″ N., long. 82°17′19″ W.)
excluding the portion within Canada.		
Q–502 SOBME to KENPA [New]		
SOBME	WP	(Lat. 44°58′24″ N., long. 97°40′44″ W.)
GEP	VORTAC	(Lat. 45°08′45″ N., long. 93°22′24″ W.)
KENPA	Fix	(Lat. 44°47′42″ N., long. 82°23′36″ W.)
excluding the portion within Canada.		
Q–504 HEMDI to NOTAP [New]		
HEMDI	WP	(Lat. 45°19′50″ N., long. 97°37′46″ W.)
CESNA	WP	(Lat. 45°52′14″ N., long. 92°10′59″ W.)
NOTAP	WP	(Lat. 45°12′30″ N., long. 82°28′30″ W.)
excluding the portion within Canada.		
Q–505 HEMDI to OMAGA [New]		
HEMDI	WP	(Lat. 45°19′50″ N., long. 97°37′46″ W.)
CESNA	WP	(Lat. 45°52′14″ N., long. 92°10′59″ W.)
RIMBE	WP	(Lat. 46°02′04″ N., long. 88°04′50″ W.)
OMAGA	Fix	(Lat. 46°03′04″ N., long. 84°00′00″ W.)
excluding the portion within Canada.		

* * * * *

Issued in Washington, DC, on April 28, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11638 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14937; Airspace Docket No. 03–ACE–40]

Modification of Class D Airspace; and Modification of Class E Airspace; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Sioux Gateway Airport, Sioux City, IA, has been renamed Sioux Gateway/Col. Bud Day Field. An examination of controlled airspace for Sioux City, IA revealed discrepancies in the Sioux Gateway/Col. Bud Day Field airport reference point used in the legal descriptions for the Sioux City, IA Class D and Class E airspace areas. The intended effect of this rule is to replace ''Sioux Gateway Airport'' in the legal descriptions of Sioux City, IA Class D and Class E airspace areas with ''Sioux Gateway/Col. Bud Day Field,'' to incorporate the current Sioux Gateway/Col. Bud Day Field airport reference point into the legal descriptions of these airspace areas and to bring the legal descriptions into compliance with FAA Orders.

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–2003–14937/ Airspace Docket No. 03–ACE–40, 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 part 71 modifies the Class D airspace area, the Class E airspace area designated as an extension to the Class D airspace area, the Class E airspace designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Sioux City, IA. It replaces ''Sioux Gateway Airport,'' the former name of the airport, with ''Sioux Gateway/Col. Bud Day Field,'' the new name of the airport, in the legal descriptions. This amendment also incorporates the current Sioux Gateway/Col. Bud Day Field airport reference point into the legal descriptions of these airspace areas. 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 aeronautical charts. Class D airspace areas are 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, Class E airspace designated as surface areas and the Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6004, 6002 and 6005 respectively 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. 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–2003–14937/Airspace Docket No. 03–ACE–40.'' 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 5000 Class D Airspace.

* * * * *

ACE IA D Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′15″N., long. 96°28′21″W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE IA E4 Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
Sioux City VORTAC
(Lat. 42°20′40″N., long. 96°19′25″W.)
Gateway NDB
(Lat. 42°24′29″N., long. 96°23′09″W.)

That airspace extending upward from the surface within 2.2 miles each side of the 140° radial of the Sioux City VORTAC extending from the 4.3-mile radius of the Sioux Gateway/Col. Bud Day Field to 5.3 miles southeast of the VORTAC and 2.5 miles each side of the 170° bearing from the Gateway NDB extending from the 4.3-mile radius of Sioux Gateway/Col. Bud Day Field to 7 miles south of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′15″ N., long. 96°28′21″ W.)
Sioux City VORTAC
(Lat. 42°20′40″ N., long. 96°19′25″ W.)
Gateway NDB
(Lat. 42°24′29″ N., long. 96°23′09″ W.)

Within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field and that airspace extending upward from the surface within 2.2 miles each side of the 140° radial of the Sioux City VORTAC extending from the 4.3-mile radius of the Sioux Gateway/Col. Bud Day Field to 5.3 miles southeast of the VORTAC and 2.5 miles each side of the 170° bearing from the Gateway NDB extending from the 4.3-mile radius of Sioux Gateway/Col. Bud Day Field to 7 miles south of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
Sioux City VORTAC

Lat. 42°20′40″N., long. 96°19′25″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sioux Gateway/Col. Bud Day Field and within 3 miles each side of the 139° radial of the Sioux City VORTAC extending from the 7-mile radius to 17.8 miles southeast of the VORTAC and within 3 miles each side of the 319° radial of the Sioux City VORTAC extending from the 7-mile radius to 25.3 miles northwest of the VORTAC and within 2 miles each side of the 360° bearing from the Sioux Gateway/Col. Bud Day Field extending from the 7-mile radius to 9.2 miles north of the airport.

* * * * *

Issued in Kansas City, MO on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11640 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15074; Airspace Docket No. 03–ACE–42]

Modification of Class E Airspace; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Cedar Rapids, IA revealed a discrepancy in the Cedar Rapids, The Eastern Iowa Airport, IA airport reference point. This action corrects the discrepancy by modifying the Cedar Rapids, IA Class E airspace areas and by incorporating the change into the Class E airspace legal descriptions. For continuity, it also modifies the legal description title of the Class E surface area at Cedar Rapids, IA.

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 25, 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–2003–15074/Airspace Docket No. 03–ACE–42, 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: An examination of controlled airspace for Cedar Rapids, IA revealed a discrepancy in the Cedar Rapids, The Eastern Iowa Airport, IA airport reference point. This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace designated as a surface area at Cedar Rapids, IA by incorporating the revised airport reference point and, for continuity, by modifying the title of this airspace area to agree with other Class E airspace at Cedar Rapids, IA. This amendment also modifies Cedar Rapids, IA Class E airspace area extending upward from 700 feet above the surface and its legal description by incorporating the revised The Eastern Iowa Airport airport reference point. This action brings the legal descriptions of both Cedar Rapids, IA 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 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–2003–15074/Airspace Docket No. 03–ACE–42.'' 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 IA E2 Cedar Rapids, IA

Cedar Rapids, The Eastern Iowa Airport, IA
(Lat. 41°53′05″ N., long. 91°42′37″ W.)

Within a 4.4-mile radius of The Eastern Iowa Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/Facility/Directory.

* * * * *

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

* * * * *

ACE IA E5 Cedar Rapids, IA

Cedar Rapids, The Eastern Iowa Airport, IA
(Lat. 41°53′05″ N., long. 91°42′37″ W.)
CINDY LOM
(Lat. 41°53′08″ N., long. 91°48′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of The Eastern Iowa Airport and within 3 miles each side of the 271° bearing from the CINDY LOM, extending from the 7.4-mile radius to 19.3 miles west of the airport.

* * * * *

Issued in Kansas City, MO, on May 1, 2003.

Herman J. Lyons, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11645 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14935; Airspace Docket No. 03–ACE–38]

Modification of Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Monticello, IA. An examination of controlled airspace for Monticello, IA revealed discrepancies in the Monticello Regional Airport airport reference point used in the legal description for the Monticello, IA Class E airspace area. This action corrects the discrepancies by modifying the Monticello, IA Class E airspace area. It also incorporates the revised Monticello Regional Airport 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–2003–14935/ Airspace Docket No. 03–ACE–38, 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 part 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Monticello, IA. An examination of controlled airspace for Monticello, IA revealed discrepancies in the Monticello Regional Airport airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Monticello Regional Airport airport reference point and brings the legal description of the Monticello, 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–2003–14935/Airspace Docket No. 03–ACE–38.'' 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, date 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 Monticello, IA

Monticello Regional Airport, IA
(Lat. 42°13′13″ N., long. 91°09′48″ W.)
Monticello NDB
(Lat. 42°12′02″ N., long. 91°08′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Monticello Regional Airport and within 2.6 miles each side of the 141° bearing from the Monticello NDB extending from the 6.4-mile radius to 9.2 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11644 Filed 5–8ndash;03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14658; Airspace Docket No. 03–ACE–27]

Modification of Class E Airspace; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace areas at Fort Leonard Wood, MO. An examination of controlled airspace at Fort Leonard, MO revealed discrepancies in the dimensions of the Fort Leonard, MO Class E4 and Class E5 airspace areas. This action corrects the discrepancies by modifying the airspace areas.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Waynesville Regional Airport at Forney Field and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, June 12, 2003.

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:

History

On Tuesday, March 25, 2003, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace areas at Fort Leonard Wood, MO (68 FR 14359) [FR Doc. 03–7073]. The proposal was to modify the Class E airspace area designated as an extension to the Class D airspace and the Class E airspace area extending upward from 700 feet or more above the surface at Fort Leonard Wood, MO. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designated as an extension to a Class D area are published in Paragraph 6004 of FAA Order 7409.9K, 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 Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) decreases the size of the Fort Leonard Wood, MO Class E airspace area designated as an extension to the Class D airspace by relocating the southeastern boundary of from 16 miles to 7 miles southeast of the Buckhorn Nondirectional Radio Beacon (NDB). It also increases the dimensions of the Class E airspace area extending upward from 700 feet or more above the surface to approximately the current dimensions of the Class E airspace area designated as an extension to the Class D airspace. These actions correct the discrepancies in the controlled airspace at Fort Leonard Wood, MO and bring them into compliance with FAA Order 8260.19. The areas will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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).

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 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 6004 Class E airspace areas designated as an extension to Class D or Class E Surface area.

* * * * *

ACE MO E4 Fort Leonard Wood, MO

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44′30″ N., long. 92°08′27″ W.)
Forney VOR
(Lat. 37°44′33″ N., long. 92°08′20″ W.)
Buckhorn NDB
(Lat. 37°41′51″ N., long. 92°06′14″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Forney VOR 318° radial extending from the 4-mile radius of Waynesville Regional Airport at Forney Field to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 4-mile radius of the airport to 7 miles southeast of the Buckhorn NDB, excluding that airspace within the R–4501 Fort Leonard Wood Restricted Areas, during the specific times they are in effect. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE MO E5 Fort Leonard Wood, MO

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44′30″ N., long. 92°08′27″ W.)
Forney VOR
(Lat. 37°44′33″ N., long. 92°08′20″ W.)
Buckhorn NDB
(Lat. 37°41′51″ N., long. 92°06′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Waynesville Regional Airport at Forney Field and within 2.4 miles each side of the Forney VOR 318° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 6.5-mile radius of the airport to 16 miles southeast of the Buckhorn NDB; excluding that airspace within the R–4501 Fort Leonard Wood, MO, Restricted Areas during the specific times they are in effect.

* * * * *

Issued in Kansas City, MO, on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11643 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14936; Airspace Docket No. 03–ACE–39]

Modification of Class E Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Muscatine, IA, delete the Muscatine NDB and coordinates from the legal description of Class E airspace at Muscatine, IA, and bring the legal description 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–2003–14936/ Airspace Docket No. 03–ACE–39, 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 part 71 revises the Class E airspace at Musatine, IA. The Muscatine Nondirectional Radio Beacon (NDB) that served Muscatine Municipal Airport was decommissioned and the standard instrument approach procedures (SIAP) that utilized the NDB were cancelled. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodated the NDB SIAPs is no longer needed. An examination of controlled airspace for Muscatine, IA revealed discrepancies in the Muscatine Municipal Airport airport reference point used in the legal description for this airspace area. The examination also revealed discrepancies in the location of the Port City Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) used in the legal description for the Muscatine, IA Class E airspace area. This amendment incorporates the revised Muscatine Municipal Airport airport reference point and the revised location of the Port City VOR/DME and brings the legal description of the Muscatine, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The amendment to Class E airspace at Muscatine, IA provides controlled airspace at and above 700

feet AGL to contain SIAPs, other than the NDB SIAPs, at Muscatine Municipal Airport. The additional Class E airspace necessary for the NDB SIAPs is revoked. The Muscatine NDB and coordinates, and reference to these, are deleted from the legal description of Muscatine, IA Class E airspace. 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. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. 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 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–2003–14936/Airspace Docket No. 03–ACE–39''. 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 Muscatine, IA

Muscatine Municipal Airport, IA
(Lat. 41°22′04″ N., long. 91°08′54″ W.)
Port City VOR/DME
(Lat. 41°21′59″ N., long. 91°08′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Muscatine Municipal Airport and within 2.6 miles each side of the 061° radial of the Port City VOR/DME extending from the 6.5-mile radius to 7 miles northwest of the airport and within 2.6 miles each side of the 231° radial of the VOR/DME extending from the 6.5-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11642 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14938; Airspace Docket No. 03–ACE–41]

Modification of Class E Airspace; Ottumwa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Ottumwa, IA revealed discrepancies in the legal descriptions for the Ottumwa, IA Class E airspace areas. This action corrects the discrepancies by modifying the Ottumwa, IA Class E airspace areas and by incorporating the changes into the Class E airspace legal descriptions.

DATES: The 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–2003–14938/ Airspace Docket No. 03–ACE–41, 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 part 71 modifies the legal description of the Class E airspace designated as a surface area at Ottumwa, IA. The navigational aid serving Ottumwa Industrial Airport is misidentified as a collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) when it is actually a very high frequency omni-directional range (VOR)/distance measuring equipment (DME) facility. This amendment also modifies Ottumwa, IA Class E airspace area extending upward from 700 feet above the surface and its legal description. It makes the correction listed above to this airspace area, modifies the airport name and corrects an error in the listed location of the navigational aid serving Ottumwa Industrial Airport. This action brings the legal descriptions of both Ottumwa, IA 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 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–2003–14938/Airspace Docket No. 03–ACE–41.'' 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 had 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), 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 IA E2 Ottumwa, IA

Ottumwa Industrial Airport, IA
(Lat. 41°06′24″ N., long. 92°26′53″ W.)
Ottumwa VOR/DME
(Lat. 41°01′45″ N., long. 92°19′33″ W.)

Within a 4.1-mile radius of Ottumwa Industrial Airport and within 1.8 miles each side of the Ottumwa VOR/DME 309° radial extending from the 4.1-mile radius to the VOR/DME.

* * * * *

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

* * * * *

ACE IA E5 Ottumwa, IA

Ottumwa Industrial Airport, IA
(Lat. 41°06′24″ N., long. 92°26′53″ W.)
Ottumwa VOR/DME
(Lat. 41°01′45″ N., long. 92°19′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of Ottumwa Industrial Airport and within 1.8 miles each side of the Ottumwa VOR/DME 309° radial extending from the 6.6-mile radius to 11.2 miles northwest of the

airport and within 2 miles each side of the Ottumwa VOR/DME 129° radial extending from the 6.6-mile radius to 1 mile southeast of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on April 29, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11641 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA 2003–14368; Airspace Docket No. ASD 02–ASW–4]

Revision of Jet Routes; Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises segments of Jet Route 2 (J–2), J–138, and J–590 by realigning the routes to the north over the Baton Rouge, LA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is taking this action to enhance the management of the aircraft operations over the Baton Rouge, LA, area.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2003, the FAA proposed to amend 14 CFR part 71 to revise J–2, J–138 and J–590 (68 FR 7949). The FAA is conducting a comprehensive revision of the Houston terminal airspace area. As part of this effort, the FAA is taking this action to realign certain segments of J–2, J–138, and J–590 over the new Baton Rouge, LA, VORTAC to promote the expeditious movement of aircraft through the Baton Rouge, LA, airspace area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal.

The Rule

This amendment to 14 CFR part 71 revises segments of J–2 and J–138 between the Lake Charles, LA, VORTAC and the Semmes, AL, VORTAC; and J–590 between the Lake Charles, LA, VORTAC and the Greene County, MS, VORTAC, by realigning the routes to the north over the Baton Rouge, LA, VORTAC. This action supports the planned revision of the Houston terminal airspace area.

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. Therefore, this proposed 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) 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.

Jet routes are published in paragraph 2004 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 jet routes listed in this document will be published subsequently in the order.

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 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 FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–2 [Revised]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.

* * * * *

J–138 [Revised]

From Fort Stockton, TX, via Center Point, TX; San Antonio, TX; Hobby, TX; Lake Charles, LA; Baton Rouge, LA; to Semmes, AL.

* * * * *

J–590 [Revised]

From Lake Charles, LA, via Baton Rouge, LA; Greene County, MS; to Montgomery, AL.

* * * * *

Issued in Washington, DC, on May 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11637 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST–2003–15072]

Guidance Concerning Service Animals in Air Transportation

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of policy guidance concerning service animals in air transportation.

SUMMARY: This notice publishes a revision to the Department of Transportation's Guidance Concerning Service Animals in Air Transportation, originally published in the **Federal Register** on November 1, 1996. It is the result of the Department's review of a September 19, 2002, submission of suggested improvements to the existing

guidance from representatives of the disability community and the airline industry.

ADDRESSES: This guidance document is available on the Department's Web site at *http://airconsumer.ost.dot.gov/* and future updates or revisions will be posted there. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings, C–70, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Damon P. Whitehead, Office of the General Counsel, Office of Aviation Enforcement and Proceedings, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–1743; fax: (202) 366–7152; E-mail: *damon.whitehead@ost.dot.gov.*

Policy Guidance Concerning Service Animals in Air Transportation

In 1990, the U.S. Department of Transportation (DOT) promulgated the official regulations implementing the Air Carrier Access Act (ACAA). Those rules are entitled *Nondiscrimination on the Basis of Disability in Air Travel* (14 CFR part 382). Since then the number of people with disabilities traveling by air has grown steadily. This growth has increased the demand for air transportation accessible to all people with disabilities and the importance of understanding DOT's regulations and how to apply them. This document expands on an earlier DOT guidance document published in 1996[1], which was based on an earlier Americans with Disabilities Act (ADA) service animal guide issued by the Department of Justice (DOJ) in July 1996. The purpose of this document is to aid airline employees and people with disabilities in understanding and applying the ACAA and the provisions of Part 382 with respect to service animals in determining:

(1) Whether an animal is a service animal and its user a qualified individual with a disability;

(2) How to accommodate a qualified person with a disability with a service animal in the aircraft cabin; and

(3) When a service animal legally can be refused carriage in the cabin.

Background

The 1996 DOT guidance document defines a service animal as ''any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government.'' This document refines DOT's previous definition of service animal[2] by making it clear that animals that assist persons with disabilities by providing emotional support qualify as service animals and ensuring that, in situations concerning emotional support animals, the authority of airline personnel to require documentation of the individual's disability and the medical necessity of the passenger traveling with the animal is understood.

Today, both the general public and people with disabilities use many different terms to identify animals that can meet the legal definition of ''service animal.'' These range from umbrella terms such as ''assistance animal'' to specific labels such as ''hearing,'' ''signal,'' ''seizure alert,'' ''psychiatric service,'' ''emotional support'' animal, etc. that describe how the animal assists a person with a disability.

When Part 382 was promulgated, most service animals were guide or hearing dogs. Since then, a wider variety of animals (*e.g.,* cats, monkeys, etc.) have been individually trained to assist people with disabilities. Service animals also perform a much wider variety of functions than ever before (*e.g.,* alerting a person with epilepsy of imminent seizure onset, pulling a wheelchair, assisting persons with mobility impairments with balance). These developments can make it difficult for airline employees to distinguish service animals from pets, especially when a passenger does not appear to be disabled, or the animal has no obvious indicators that it is a service animal. Passengers may claim that their animals are service animals at times to get around airline policies that restrict the carriage of pets. Clear guidelines are needed to assist airline personnel and people with disabilities in knowing what to expect and what to do when these assessments are made.

Since airlines also are obliged to provide all accommodations in accordance with FAA safety regulations (*see* section 382.3(d)), educated consumers help assure that airlines provide accommodations consistent with the carriers' safety duties and responsibilities. Educated consumers also assist the airline in providing them the services they want, including accommodations, as quickly and efficiently as possible.

General Requirements of Part 382

In a nutshell, the main requirements of Part 382 regarding service animals are:

• Carriers shall permit dogs and other service animals used by persons with disabilities to accompany the persons on a flight. See section 382.55(a)(1–2).

—Carriers shall accept as evidence that an animal is a service animal identifiers such as identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified individual with a disability using the animal.

—Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation or to comply with FAA regulations.

• If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying, the carrier shall offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel in the cargo hold (see section 382.37(c)).

• Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability (see section 382.57).

Two Steps for Airline Personnel

To determine whether an animal is a service animal and should be allowed to accompany its user in the cabin, airline personnel should:

1. Establish whether the animal is a pet or a service animal, and whether the passenger is a qualified individual with a disability; and then

2. Determine if the service animal presents either

• a ''direct threat to the health or safety of others,'' or

• a significant threat of disruption to the airline service in the cabin (*i.e.* a ''fundamental alteration'' to passenger service). *See* 382.7(c).

Service Animals

How Do I Know It's a Service Animal and Not a Pet?

Remember: In most situations *the key is TRAINING.* Generally, a service animal is individually trained to perform functions to assist the passenger who is a qualified individual with a disability. In a few extremely limited situations, an animal such as a seizure alert animal may be capable of performing functions to assist a qualified person with a disability without individualized training. Also, an animal used for emotional support need not have specific training for that function. Similar to an animal that has been individually trained, the definition of a service animal includes: An animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal.

These five steps can help one determine whether an animal is a service animal or a pet:

1. *Obtain credible verbal assurances:* Ask the passenger: ''Is this your pet?'' If the passenger responds that the animal is a service animal and not a pet, but uncertainty remains about the animal, appropriate follow-up questions would include:

—''What tasks or functions does your animal perform for you?'' or

—''What has it been trained to do for you?''

—''Would you describe how the animal performs this task (or function) for you?''

• As noted earlier, functions include, but are not limited to:

A. Helping blind or visually impaired people to safely negotiate their surroundings;

B. Alerting deaf and hard-of-hearing persons to sounds;

C. Helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or

D. Alert or respond to a disability-related need or emergency (*e.g.,* seizure, extreme social anxiety or panic attack).

[1] 61 FR 56409, 56420 (Nov. 1, 1996).

[2] See Glossary for definition of this and other terms.

• Note that to be a service animal that can properly travel in the cabin, the animal need not necessarily perform a function for the passenger during the flight. For example, some dogs are trained to help pull a passenger's wheelchair or carry items that the passenger cannot readily carry while using his or her wheelchair. It would not be appropriate to deny transportation in the cabin to such a dog.

• If a passenger cannot provide credible assurances that an animal has been individually trained or is able to perform some task or function to assist the passenger with his or her disability, the animal might not be a service animal. In this case, the airline personnel may require documentation (*see* Documentation below).

• There may be cases in which a passenger with a disability has personally trained an animal to perform a specific function (*e.g.,* seizure alert). Such an animal may not have been trained through a formal training program (*e.g.,* a ''school'' for service animals). If the passenger can provide a reasonable explanation of how the animal was trained or how it performs the function for which it is being used, this can constitute a ''credible verbal assurance'' that the animal has been trained to perform a function for the passenger.

2. *Look for physical indicators on the animal:* Some service animals wear harnesses, vests, capes or backpacks. Markings on these items or on the animal's tags may identify it as a service animal. It should be noted, however, that the absence of such equipment does not necessarily mean the animal is not a service animal.

3. *Request documentation for service animals other than emotional support animals:* The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal, but DOT urges carriers not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation as a condition for allowing the animal to travel in the cabin. The purpose of documentation is to substantiate the passenger's disability-related need for the animal's accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin. Examples of documentation include a letter from a licensed professional treating the passenger's condition (*e.g.,* physician, mental health professional, vocational case manager, etc.)

4. *Require documentation for emotional support animals:* With respect to an animal used for emotional support (which need not have specific training for that function), airline personnel may require current documentation (*i.e.,* not more than one year old) on letterhead from a mental health professional stating (1) that the passenger has a mental health-related disability; (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment or to assist the passenger (with his or her disability); and (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, *e.g.,* panic attacks.

5. *Observe behavior of animals:* Service animals are trained to behave properly in public settings. For example, a properly trained guide dog will remain at its owner's feet. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability or is necessary for a passenger's emotional well-being.

What About Service Animals in Training?

Part 382 requires airlines to allow service animals to accompany their handlers [3] in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals provided that they comply with other applicable requirements (*e.g.,* the Animal Welfare Act). Although ''service animals in training'' are not pets, the ACAA does not include them, because ''in training'' status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines, and become familiar with their policies.

What About a Service Animal That Is Not Accompanying a Qualified Individual With a Disability?

When a service animal is not accompanying a passenger with a disability, the airline's general policies on the carriage of animals usually apply. Airline personnel should know their company's policies on pets, service animals in training, and the carriage of animals generally. Individuals planning to travel with a service animal other than their own should inquire about the applicable policies in advance.

[3] Service animal users typically refer to the person who accompanies the animal as the ''handler.''

Qualified Individuals With Disabilities [4]

How Do I Know if a Passenger Is a Qualified Individual With a Disability Who Is Entitled To Bring a Service Animal in the Cabin of the Aircraft if the Disability Is Not Readily Apparent?

• Ask the passenger about his or her disability as it relates to the need for a service animal. Once the passenger identifies the animal as a service animal, you may ask, ''How does your animal assist you with your disability?'' Avoid the question ''What is your disability?'' as this implies you are asking for a medical label or the cause of the disability, which is intrusive and inconsistent with the intent of the ACAA. Remember, Part 382 is intended to facilitate travel by people with disabilities by requiring airlines to accommodate them on an individual basis.

• Ask the passenger whether he or she has documentation as a means of verifying the medical necessity of the passenger traveling with the animal. Keep in mind that you can ask but cannot require documentation as proof of service animal status UNLESS (1) a passenger's verbal assurance is not credible and the airline personnel cannot in good faith determine whether the animal is a service animal without documentation, or (2) a passenger indicates that the animal is to be used as an emotional support animal.

• Using the questions and other factors above, you must decide whether it is reasonable to believe that the passenger is a qualified individual with a disability, and the animal is a service animal.

Denying a Service Animal Carriage in the Cabin

What Do I Do if I Believe That Carriage of the Animal in the Cabin of the Aircraft Would Inconvenience Non-Disabled Passengers?

Part 382 requires airlines to permit qualified individuals with a disability to be accompanied by their service animals in the cabin, as long as the animals do not (1) pose a direct threat to the health or safety of others (*e.g.,* animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft) or (2) cause a significant disruption in cabin service (*i.e.,* a ''fundamental alteration'' to passenger service). Inconvenience of other passengers is not sufficient grounds to deny a service animal carriage in the cabin; as indicated later in this document, however, airlines are not required to ask other passengers to relinquish space that they would normally use in order to accommodate a service animal (*e.g.,* space under the seat in front of the non-disabled passenger).

What Do I Do if I Believe That a Passenger's Assertions About Having a Disability or a Service Animal Are Not Credible?

• Ask if the passenger has documentation that satisfies the requirements for determining that the animal is a service animal (*see* discussion of ''Documentation'' above).

• If the passenger has no documents, then explain to the passenger that the animal

[4] See Glossary.

cannot be carried in the cabin, because it does not meet the criteria for service animals. Explain your airline's policy on pets (*i.e.*, will or will not accept for carriage in the cabin or cargo hold), and what procedures to follow.

• If the passenger does not accept your explanation, avoid getting into an argument. Ask the passenger to wait while you contact your airline's *complaint resolution official (CRO).* Part 382 requires all airlines to have a CRO available at each airport they serve during all hours of operation. The CRO may be made available by telephone. The CRO is a resource for resolving difficulties related to disability accommodation.

• Consult with the CRO immediately, if possible. The CRO normally has the authority to make the final decision regarding carriage of service animals. In the rare instance that a service animal would raise a concern regarding flight safety, the CRO may consult with the pilot-in-command. If the pilot-in-command makes a decision to restrict the animal from the cabin or the flight for safety reasons, the CRO cannot countermand the pilot's decision. This does not preclude the Department from taking subsequent enforcement action, however, if it is determined that the pilot's decision was inconsistent with part 382.

• If a passenger makes a complaint to a CRO about a past decision not to accept an animal as a service animal, then the CRO must provide a written statement to the passenger within 10 days explaining the reason(s) for that determination. If carrier personnel other than the CRO make the final decision, a written explanation is not required; however, because denying carriage of a legitimate service animal is a potential civil rights violation, it is recommended that carrier personnel explain to the passenger the reason the animal will not be accepted as a service animal. A recommended practice may include sending passengers whose animals are not accepted as service animals a letter within ten business days explaining the basis for such a decision.

In considering whether a service animal should be excluded from the cabin, keep these things in mind:

• Certain unusual service animals pose unavoidable safety and/or public health concerns and airlines are not required to transport them. Snakes, other reptiles, ferrets, rodents, and spiders certainly fall within this category of animals.

• In all other circumstances, each situation must be considered individually. Do not make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals. You may inquire, however, about whether a particular animal has been trained to behave properly in a public setting.

• Before deciding to exclude the animal, you should consider and try available means of mitigating the problem (*e.g.*, muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the disruptive behavior, offering the passenger a different seat where the animal won't block the aisle.)

If it is determined that the animal should not accompany the disabled passenger in the cabin at this time, offer the passenger alternative accommodations in accordance with part 382 and company policy (*e.g.*, accept the animal for carriage in the cargo hold).

What About Unusual Service Animals?

• As indicated above, certain unusual service animals, pose unavoidable safety and/or public health concerns and airlines are not required to transport them. Snakes, other reptiles, ferrets, rodents, and spiders certainly fall within this category of animals. The release of such an animal in the aircraft cabin could result in a direct threat to the health or safety of passengers and crewmembers. For these reasons, airlines are not required to transport these types of service animals in the cabin, and carriage in the cargo hold will be in accordance with company policies on the carriage of animals generally.

• Other unusual animals such as miniature horses, pigs and monkeys should be evaluated on a case-by-case basis. Factors to consider are the animal's size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration (significant disruption) in the cabin service. If none of these factors apply, the animal may accompany the passenger in the cabin. In most other situations, the animal should be carried in the cargo hold in accordance with company policy.

Miscellaneous Questions

What About the Passenger Who Has Two or More Service Animals?

• A single passenger legitimately may have two or more service animals. In these circumstances, you should make every reasonable effort to accommodate them in the cabin in accordance with part 382 and company policies on seating. This might include permitting the passenger to purchase a second seat so that the animals can be accommodated in accordance with FAA safety regulations. You may offer the passenger a seat on a later flight if the passenger and animals cannot be accommodated together at a single passenger seat. Airlines may not charge passengers for accommodations that are required by part 382, including transporting service animals in the cargo compartment. If carriage in the cargo compartment is unavoidable, notify the destination station to return the service animal(s) to the passenger at the gate as soon as possible, or to assist the passenger as necessary to retrieve them in the appropriate location.

What if the Service Animal Is Too Large to Fit Under the Seat in Front of the Customer?

• If the service animal does not fit in the assigned location, you should relocate the passenger and the service animal to some other place in the cabin in the same class of service where the animal will fit under the seat in front of the passenger and not create an obstruction, such as the bulkhead. If no single seat in the cabin will accommodate the animal and passenger without causing an obstruction, you may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold. As indicated above, airlines may not charge passengers with disabilities for services required by part 382, including transporting their oversized service animals in the cargo compartment.

Should Passengers Provide Advance Notice to the Airline Concerning Multiple or Large Service Animals?

In most cases, airlines may not insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

What if an Airline Employee or Another Passenger on Board Is Allergic or Has an Adverse Reaction to a Passenger's Service Animal?

Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Whether or not an individual's allergies or animal aversions are disabilities (an issue this Guidance does not address), each individual's needs should be addressed to the fullest extent possible under the circumstances and in accordance with the requirements of part 382 and company policy.

Accommodating Passengers With Service Animals in the Cabin

How Can Airline Personnel Help Ensure That Passengers With Service Animals Are Assigned and Obtain Appropriate Seats on the Aircraft?

• Let passengers know the airline's policy about seat assignments for people with disabilities. For instance: (1) Should the passenger request pre-boarding at the gate? or (2) should the passenger request an advance seat assignment (a priority seat such as a bulkhead seat or aisle seat) up to 24 hours before departure? or (3) should the passenger request an advance seat assignment at the gate on the day of departure? When assigning priority seats, ask the passenger what location best fits his/her needs.

• Passengers generally know what kinds of seats best suit their service animals. In certain circumstances, passengers with service animals must either be provided their pre-requested priority seats, or if their requested seat location cannot be made available, they must be assigned to other available priority seats of their choice in the same cabin class. Part 382.38 requires airlines to provide a bulkhead seat or a seat other than a bulkhead seat at the request of an individual traveling with a service animal.

• Passengers should comply with airline recommendations or requirements regarding when they should arrive at the gate before a flight. This may vary from airport to airport and airline to airline. Not all airlines

announce pre-boarding for passengers with special needs, although it may be available. If you wish to request pre-boarding, tell the agent at the gate.

• Unless pre-boarding is not part of your carrier's business operation, a timely request for pre-boarding by a passenger with a disability should be honored (382.38 (d)).

• Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.7 (c)). Therefore, the following are *not* required in providing accommodations for users of service animals and are examples of what might realistically be viewed as creating an undue burden:

— Asking another passenger to give up the space in front of his or her seat to accommodate a service animal;
— Denying transportation to any individual on a flight in order to provide an accommodation to a passenger with a service animal;
— Furnishing more than one seat per ticket; and
— Providing a seat in a class of service other than the one the passenger has purchased.

Are Airline Personnel Responsible for the Care and Feeding of Service Animals?

Airline personnel are not required to provide care, food, or special facilities for service animals. The care and supervision of a service animal is solely the responsibility of the passenger with a disability whom the animal is accompanying.

May an Air Carrier Charge a Maintenance or Cleaning Fee to Passengers Who Travel With Service Animals?

Part 382 prohibits air carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, an air carrier may charge passengers with a disability if a service animal causes damage, as long as it is its regular practice to charge non-disabled passengers for similar kinds of damage. For example, it could charge a passenger with a disability for the cost of repairing or cleaning a seat damaged by a service animal, assuming that it is its policy to charge when a non-disabled passenger or his or her pet causes similar damage.

Advice for Passengers With Service Animals

• Ask about the airline's policy on advance seat assignments for people with disabilities. For instance: (1) Should a passenger request pre-boarding at the gate? or (2) should a passenger request an advance seat assignment (a priority seat such as a (bulkhead seat or aisle seat)) up to 24 hours before departure? or (3) should a passenger request an advance seat assignment at the gate on the day of departure?

• Although airlines are not permitted to automatically require documentation for service animals other than emotional support animals, if you think it would help you explain the need for a service animal, you may want to carry documentation from your physician or other licensed professional confirming your need for the service animal. Passengers with unusual service animals also may want to carry documentation confirming that their animal has been trained to perform a function or task for them.

• If you need a specific seat assignment for yourself and your service animal, make your reservation as far in advance as you can, and identify your need at that time.

• You may have to be flexible if your assigned seat unexpectedly turns out to be in an emergency exit row. When an aircraft is changed at the last minute, seating may be reassigned automatically. Automatic systems generally do not recognize special needs, and may make inappropriate seat assignments. In that case, you may be required by FAA regulations to move to another seat.

• Arrive at the gate when instructed by the airline, typically at least one hour before departure, and ask the gate agent for pre-boarding—if that is your desire.

• Remember that your assigned seat may be reassigned if you fail to check in on time; airlines typically release seat assignments not claimed 30 minutes before scheduled departure. In addition, if you fail to check in on time you may not be able to take advantage of the airline's pre-board offer.

• If you have a very large service animal or multiple animals that might need to be transported in the cargo compartment, contact the airline well in advance of your travel date. In most cases, airlines cannot insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

• If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's *complaint resolution official (CRO).* Part 382 requires all airlines to have a CRO available during all hours of operation. The CRO is a resource for resolving difficulties related to disability accommodations.

• Another resource for resolving issues related to disability accommodations is the U.S. Department of Transportation's aviation consumer disability hotline. The toll-free number is 1–800–778–4838 (voice) and 1–800–455–9880 (TTY).

Glossary

Direct Threat to the Health or Safety of Others

A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Fundamental Alteration

A modification that substantially alters the basic nature or purpose of a program, service, product or activity.

Individual With a Disability

''Any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.'' (Section 382.5).

Qualified Individual With a Disability

Any individual with a disability who:

(1) ''Takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public with respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies'';

(2) ''Offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain * * * a ticket'' ''for air transportation on an air carrier''; or

(3) ''Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers.'' (Section 382.5).

Service Animal

Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.

Sources

See: 14 CFR 382.5, 14 CFR 382.37(a) and (c), 14 CFR 382.38 (a)(3), (b), (d) & (h)–(j), 14 CFR 382.55(a)(1)–(3), 14 CFR 382.57, ''Guidance Concerning Service Animals in Air Transportation,'' (61 FR 56420–56422, (November 1, 1996)), ''Commonly Asked Questions About Service Animals in Places of Business'' (Department of Justice, July 1996), and ''ADA Business Brief: Service Animals'' (Department of Justice, April 2002).

Issued in Washington, DC, on May 2, 2003.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 03–11452 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 0

[Docket No.: 010926237–3101–02]

RIN 0690–AA32

Employee Responsibilities and Conduct; Removal of Obsolete Regulations

AGENCY: Office of the General Counsel, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the ''Department'') issues this final rule to revise and remove certain sections of the Commerce and Foreign Trade Regulation concerning the policies and procedures relating to employee responsibilities and conduct. The government-wide regulations of the Office of Government Ethics make these Department provisions obsolete.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Chris Cox, Attorney-Advisor, telephone number: (202) 482–2442, fax: (202) 501–2295.

SUPPLEMENTARY INFORMATION: In August, 1992, the Office of Government Ethics promulgated the Executive Branch Financial Disclosure, Qualified Trusts, and Certificate of Divestiture regulations, 5 CFR part 2634, and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. These regulations implemented the responsibilities and standards required by the 1978 Ethics in Government Act.

This final rule removes the following provisions from the Department's internal conduct regulations codified at 15 CFR part 0:

- Subparts B, C, and E;
- Sections 0.735–10a, 0.735–11, 0.735–12, 0.735–13, 0.735–14, and 0.735–15; and
- Appendices B and C.

These provisions are removed because they are superseded by provisions in the Ethics Program that are codified at 5 CFR parts 2634 and 2635.

This final rule also modifies the authority citation for 15 CFR part 0, and revises the language in 15 CFR section 0.735–2 to indicate that employees should refer to the standards of ethical conduct, financial disclosure, and other applicable regulations that are codified in 5 CFR part 2635 and 5 CFR part 2634.

Any supplementary regulations necessary, for Department-specific circumstances, may be promulgated in the future as provided by the current Office of Government Ethics regulations.

Classification

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

It has been determined that this action does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act

Pursuant to 5 U.S.C 553(b)(A) prior notice and an opportunity for public comment are not required for this rule of agency organization, management, and procedure. Further, this rule of agency organization, management, and procedure is not a substantive rule subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

Regulatory Flexibility Act

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Paperwork Reduction Act

This rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects 15 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Theodore W. Kassinger,

General Counsel.

■ For the reasons set forth in the preamble, the Department of Commerce is amending 15 CFR part 0 as follows:

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

■ 1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR part 2635.

■ 2. Section 0.735–2 is revised to read as follows:

§ 0.735–2 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the Department of Commerce should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635 and the executive branch-wide financial disclosure regulations at 5 CFR part 2634

■ 3. Subparts B and C are removed and reserved.

■ 4. In Subpart D, §§ 0.735.10a, 0.735–11, 0.735–12, 0.735–13, 0.735–14, 0.735–15 are removed and reserved.

■ 5. Subpart E is removed and reserved.

■ 6. Appendices B and C to part 0 are removed.

[FR Doc. 03–11490 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter 1

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the Dockets Management Branch (DMB). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 1998 (63 FR 32888), FDA published a notice announcing the relocation of DMB from 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, to its current location at 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. This document amends FDA's regulations to reflect DMB's change of address by removing the entire outdated address wherever it appears and by adding the new address in its place in 21 CFR parts 3, 7, 10, 12, 17, 25, 60, 100, 101, 109, 184, 201, 312, 314, 328, 330, 355, 500, 509, 520, 522, 601, 808, 812, 814, 1030, 1240, and 1250.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

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

■ 1. Parts 3, 7, 10, 12, 17, 25, 60, 100, 101, 109, 184, 201, 312, 314, 328, 330, 355, 500, 509, 520, 522, 601, 808, 812, 814, 1030, 1240, and 1250 are amended by removing ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' or ''rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857'' wherever they appear and by adding in their place ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852.''

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11650 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9048]

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Treasury Decision 9048, which was published in the **Federal Register** on Friday, March 14, 2003 (68 FR 12287) that redetermines the basis of stock of a subsidiary member or a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member.

DATES: This correction is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 9048 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

§ 1.1502–35T [Corrected]

■ **PAR. 2.** Section 1.1502–35T(b)(2)(ii)(B) is amended by removing the word ''or'' at the end of the paragraph.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–11591 Filed 5–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting a system of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The proposed rule was published on November 29, 2002, at 67 FR 71119–71120. One comment was received which has prompted a change in the final rule. The rule, as changed, is being adopted as final.

One public comment was received where the commenter expressed concern that the wording of the proposed rule appears to impute criminality to those individuals receiving background checks and appears to suspend the rights of those individuals interacting with the DoD. We disagree. As provided by law, the rule provides a basis for the Department to exempt specified records from certain provisions of the Privacy Act. It does not serve as a basis for making judgments regarding individuals on whom the Department conducts background checks. Neither does it act to suspend any rights the individual may be entitled to under DoD administered programs. The commenter observes that the rule is unecessary and redundant. We disagree. The purpose of the rule is to preserve and protect the identity of a source who has been promised confidentiality in return for the information he or she is providing the Department. Because only a specific exemption can be claimed for the records, the Department must establish the exemption in order to accomplish the desired objective. And finally, the commenter expresses the view that the scope of the rule is overly broad. We agree. The principal purpose of the claimed exemption is to protect the identity of a confidential source. We therefore have revised the rule so that the exemption is only being claimed for those provisions of the Act that are supportive of the overally purpose of the exemption.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more

and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 311

Privacy.

■ Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OSD PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub.L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 311.8, is amended by adding paragraph (c)(14) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) Specific exemptions. * * *

(14) System identifier and name: DHRA 02, PERSEREC Research Files.

(i) Exemption: (A) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11574 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adding an exemption rule for the system of records F031 DoD A, entitled ''Joint Personnel Adjudication System''. The Joint Personnel Adjudication System is used for personnel security management within DoD, and provides a common, comprehensive medium to record and document personnel security actions within the DoD.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The proposed rule was published on November 29, 2002, at 67 FR 71120. No comments were received, therefore, the rule, as changed, is being adopted as final.

The principal purpose of the claimed exemption is to protect the identity of a confidential source. Therefore the rule has been changed to eliminate those provisions for which an exemption had been claimed but which now have been determined as not being supportive of the overall purpose of the exemption.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Appendix C to part 806b, is amended by adding paragraph (b)(23) to read as follows:

Appendix C to Part 806b—General and specific exemptions

* * * * *

(b) *Specific exemptions.* * * *

(23) *System identifier and name:* F031 DoD A, Joint Personnel Adjudication System.

(i) *Exemption:* (1) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(2) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11575 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–038]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the NJTRO HX Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey. Under this temporary deviation the bridge may remain closed from 6 a.m. on May 10, 2003, through 5 p.m. on May 11, 2003, and from 6 a.m. on May 17, 2003, through 5 p.m. on May 18, 2003. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from May 10, 2003, through May 18, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The NJTRO HX Bridge has a vertical clearance in the closed position of 4 feet at mean high water and 9 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(5)(e).

The bridge owner, New Jersey Transit Operation (NJTRO), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of timber railroad ties on the moveable span. The bridge must remain in the closed position to perform these repairs.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the NJTRO HX Bridge may remain in the closed position from 6 a.m. on May 10, 2003, through 5 p.m. on May 11, 2003, and from 6 a.m. on May 17, 2003, through 5 p.m. on May 18, 2003.

This deviation from the operating regulations is authorized under 33 CFR § 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 28, 2003.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–11602 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–041]

Drawbridge Operation Regulations: Long Island, NY Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Wantagh State Parkway Bridge, mile 16.1, across Goose Creek at Wantagh, New York. Under this temporary deviation the bridge may remain in the closed position from 6 a.m. on May 1, 2003, through 4 p.m. on May 15, 2003. This temporary deviation is necessary to complete painting operations at the bridge.

DATES: This deviation is effective from May 1, 2003, through May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Wantagh State Parkway Bridge has a vertical clearance in the closed position of 16 feet at mean high water and 19 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(i).

The bridge owner, New York State Department of Transportation, requested

a temporary deviation from the drawbridge operation regulations to facilitate the completion of painting operations at the bridge. The bridge must remain in the closed position to perform this work.

The Coast Guard previously issued a 30 day temporary deviation effective from April 1, 2003, through April 30, 2003, to facilitate painting operations at this bridge. Inclement weather conditions during the effective period of the first temporary deviation have resulted in a second request from the bridge owner for an additional 15 days to complete painting operations at the bridge.

The Coast Guard coordinated this second closure with the mariners who normally use this waterway to help facilitate this necessary bridge maintenance and to minimize any disruption to the marine transportation system.

Under this temporary deviation the Wantagh State Parkway Bridge will remain in the closed position from 6 a.m. on May 1, 2003, through 4 p.m. on May 15, 2003.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 29, 2003.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–11600 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–020]

Drawbridge Operation Regulations; Lower Grand River (Alternate Route), Grosse Tete, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Grosse Tete Swing Span Highway Bridge across Lower Grand River (Alternate Route), mile 47.0, at Grosse Tete, Iberville Parish, LA. This deviation allows the bridge to remain closed to navigation from May 20, 2003, through May 22, 2003. The deviation is necessary to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 6:30 a.m. on May 20, 2003, through 8:30 p.m. on May 22, 2003.

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

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

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to remove and replace the swing cylinders of the swing span bridge across Lower Grand River (Alternate Route) at mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 6:30 a.m. on Tuesday, May 20, 2003, through 8:30 p.m. on Thursday, May 22, 2003.

The swing span bridge has a vertical clearance of 2.5 feet above mean high water, elevation 9.0 feet Mean Sea Level and 11.5 feet above mean low water, elevation 0.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational craft. There are no commercial fishermen that transit the waterway at the bridge site. Due to prior experience, as well as coordination with water way users, it has been determined that this three day closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 490 times per month. In accordance with 33 CFR 117.478, the draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel. The bridge will not be able to open for emergencies during the closure period. Alternate routes are available. Mariners may transit the area via the Mississippi River through the Harvey Canal lock or via the Atchafalaya River through the Old River lock.

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

Dated: April 28, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–11601 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Port Arthur 03–002]

RIN 1625–AA00

Safety Zones; Port Neches Riverfest, Neches River, Port Neches, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for all waters of the Neches River adjacent to Port Neches Park in Port Neches, TX. These safety zones are necessary to protect spectators and vessels from the potential safety hazards associated with boat races and a fireworks display that are part of the Port Neches Chamber of Commerce Riverfest. Entry into these zones by anyone other than event participants is prohibited, unless specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

DATES: This rule is effective from 1 p.m. on May 10, 2003, until 6 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Port Arthur–03–003) and are available for inspection or copying at Marine Safety Office Port Arthur, 2875 Jimmy Johnson Blvd., Port Arthur, TX 77640 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Bryan Markland, Waterways Management Branch, Marine Safety Office Port Arthur at (409) 723–6500.

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 good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with this event. The Coast Guard did not receive notice of the Port Neches Riverfest in sufficient time to publish an NPRM.

Background and Purpose

The Port Neches Chamber of Commerce Riverfest will include a fireworks display as well as a series of boat races on the Neches River, adjacent to Port Neches Park, Port Neches, TX. Safety zones are established for those events to ensure the safety of the participants, spectators, and other vessels.

The fireworks safety zone will encompass all waters of the Neches River, shore to shore, adjacent to Port Neches Park between a northern boundary at 30°00′00″ N. and southern boundary at 29°59′42″ N. Those coordinates are based upon (NAD 83). This safety zone will be enforced from 8 p.m. to 10 p.m. on May 10, 2003.

The safety zone for the boat races will encompass all waters of the Neches River, shore to shore, adjacent to Port Neches Park in Port Neches, Texas, between a northern boundary at 30°00′12″ N. and southern boundary at 29°59′36″ N. Those coordinates are based upon (NAD 83). This safety zone will be enforced from 1 p.m. to 6 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

Entry into these zones by anyone other than event participants is prohibited, unless authorized by the Captain of the Port Port Arthur 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.

During the boat races on May 10, 2003, the waterway will be closed for 5 hours between 1 p.m. and 6 p.m. On May 11, 2003, the waterway will be closed for 10 hours. There will be two breaks during the May 11, 2003, boat races. During those breaks, vessel traffic will be allowed to pass through the zone as directed by the Coast Guard patrol commander. The break periods will begin at approximately 11 a.m. and 3 p.m. and each will last about an hour. Notifications of the safety zones and break periods will be made to the marine community by broadcast notices to mariners, through the event sponsors, and by publication in the **Federal Register**. The impacts on routine navigation are expected to be minimal.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit the portion of the Neches River adjacent to Port Neches Park, Port Neches, TX, from 1 p.m. to 6 p.m. and 8 p.m. to 10 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The safety zone for the fireworks will only be in effect for a short period of time; (2) there will be two breaks during the May 11, 2003, boat races and during those breaks vessel traffic will be allowed to pass through the zone as directed by the Coast Guard patrol commander, and (3) notifications of the safety zones and break periods will be made to the marine community by broadcast notices to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Bryan Markland, Marine Safety Office Port Arthur, at (409) 723–6500.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

Arule 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have 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.

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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION ARES 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.T08–033 is added to read as follows:

§ 165.T08–033 Safety Zones; Port Neches Riverfest, Neches River, Port Neches, TX.

(a) *Regulated Areas.* The following areas are safety zones:

(1) *Fireworks safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, TX, between a northern boundary at 30°00′00″ N and southern boundary at 29°59′42″ N. Those coordinates are based upon [NAD 83].

(2) *Boat race safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, TX, between a northern boundary at 30°00′12″ N and southern boundary at 29°59′36″ N. Those coordinates are based upon [NAD 83].

(b) *Enforcement dates.* (1) The fireworks safety zone in paragraph (a)(1) of this section will be enforced from 8 p.m. to 10 p.m. on May 10, 2003.

(2) The boat race safety zone in paragraph (a)(2) of this section will be enforced from 1 p.m. to 6 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the safety zones in this section is prohibited unless authorized by the Captain of the Port Port Arthur or a designated representative.

(2) Vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Port Arthur or a designated representative. They may be contacted via VHF Channel 16 or by telephone at 409–723–6500.

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

Dated: April 2, 2003.

Eric A. Nicolaus,

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

[FR Doc. 03–11603 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL207–3; FRL–7487–5]

Approval and Promulgation of Implementation Plans; Illinois Emission Test Averaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Illinois rules for averaging of emission tests. Illinois requested these revisions on October 9, 2001. For sources with steady emission rates, these revisions provide for assessing compliance with mass emission limits on the basis of an average of three test runs.

EPA proposed to approve these revisions on April 15, 2002, at 67 FR 18115. The Environmental Law & Policy Center and others submitted a comment letter objecting to this proposed approval. The comments observed that averaging three test runs yields a less stringent compliance test than assessing compliance based on each test run individually. The commenters thus view the submittal as an inappropriate relaxation. The comments further object that the State's rules provide for insufficient information on case-specific test protocol revisions to be able to judge how these revisions would affect test results.

EPA concludes that averaging of three mass measurement test runs is standard practice, and concludes that Illinois is formalizing its pre-existing approach and not relaxing its compliance assessments. EPA concludes further that Illinois has adopted an appropriate approach to differentiating between major and minor test method revisions and to addressing minor revisions.

DATES: This rule is effective on June 9, 2003.

ADDRESSES: Copies of the Illinois submittal and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development

Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION:

This document is organized according to the following table of contents:

I. What did EPA propose?
II. What did commenters say and what is EPA's response?
III. EPA Action.
IV. Statutory and Executive Order Reviews.

I. What Did EPA Propose?

EPA proposed to approve Illinois' test averaging rules. EPA proposed this action on April 15, 2002, at 67 FR 18115, based on a submittal by the Illinois Environmental Protection Agency on October 9, 2001.

Illinois' submittal includes a new part 283 of Title 35 of the Illinois Administrative Code, entitled General Procedures for Emissions Tests Averaging. A core feature of these rules is that evaluations of compliance of sources having relatively stable emissions with mass emission limits shall be on the basis of the average of three test runs whenever feasible. The rules further specify that the emissions tests must be in conformance with a test plan that the source must submit prior to compliance testing. Sources may request permission from IEPA to make minor deviations from the test plan. ''Minor deviations'' are defined in the rule to include only those testing procedures that do not affect the level of emissions measured and do not affect how other sources in the source category might be tested.

The averaging of three test runs is standard practice. Almost all air emission compliance tests in Illinois use methods given in Appendix A to Title 40 Code of Federal Regulations part 60 (40 CFR part 60). While EPA only requires these methods for assessing compliance with new source performance standards, in practice these methods are used nearly universally in evaluating compliance with limits applicable to older as well as newer sources. Averaging provisions for the 40 CFR part 60 methods are given in 40 CFR 60.8(f), stating that ''unless otherwise specified * * *, each performance test shall consist of three separate runs using the applicable test method * * * . For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply.'' Further text of 40 CFR 60.8(f) explains that compliance may be judged on the basis of an average of two test runs if for specified reasons a valid third test run cannot be obtained. These provisions represent standard practice in compliance assessments. EPA proposed to approve Illinois' rules because it judged them consistent with this standard practice.

It may be noted that visible emission tests are addressed somewhat differently from the mass emission tests addressed in 40 CFR 60.8. Visible emission tests, including opacity observations under Method 9 and tests of the duration of visible emissions under Method 22, involve many observations per hour (240 observations per hour in the case of Method 9), so that measurement uncertainty is addressed in these methods without averaging the results for multiple hours. That is, averaging of three test runs is standard practice only for mass emissions testing, where each test run produces only one mass emissions result. Illinois clearly intended its averaging of three test runs to apply only to mass emissions testing, and EPA's approval actions reflect that understanding.

II. What Did Commenters Say and What Is EPA's Response?

EPA received one letter commenting on its proposed rulemaking. This letter was co-signed by the Environmental Law & Policy Center, the American Lung Association of Metropolitan Chicago, and the Illinois Chapter of the Sierra Club. The following discussion is organized in comment-response format, presenting each issue or concern raised by the commenters followed by EPA's response.

Comment: The commenters observe that averaging results from three test runs provides a less stringent test of compliance than treating any one test run with excessive emissions as a violation. The commenters therefore consider Illinois' adoption of a rule providing for averaging of three test runs to be a relaxation of Illinois' rules. The commenters state that such a relaxation is impermissible under Clean Air Act section 110(l) and (for nonattainment areas) section 193 and under rules for prevention of significant deterioration unless special demonstrations of acceptability are provided.

Response: EPA agrees that averaging three test runs is less stringent than using each test run as an independent test of compliance. However, EPA does not agree that Illinois is in fact relaxing its compliance assessments.

As stated in Illinois' technical support document for its state rulemaking, ''The purpose of these * * * rules is to codify an existing Agency policy.'' Thus, compliance assessments after this rule change are no less stringent than compliance assessments before this rule change; Illinois used an average of three test runs to assess compliance before this rule change and will continue to use an average of three test runs after this rule change. Thus, this rule change merely formalized existing practice, and did not relax the procedures by which Illinois assesses compliance.

Similarly, approval of these rules into the State Implementation Plan (SIP) does not relax the approach EPA will use to assess compliance, since EPA's approach for assessing compliance before Illinois adopted these rules is the same as the approach it will use afterward, *i.e.* generally assessing compliance based on an average of three test runs.

Thus, Illinois' formalization of this practice does not represent a relaxation, since in fact Illinois and EPA will be assessing compliance in the same way after this revision as before. Since EPA does not consider this a relaxation, the provisions of sections 110(l) and 193 and the prevention of significant deterioration provisions do not apply.

The purpose of addressing compliance on the basis of a three run average is to address measurement uncertainty. Under normal circumstances, EPA believes that results from one test run do not provide sufficient reliability to demonstrate compliance or noncompliance with mass emission limits. Use of a three run average (or, when necessary and appropriate, at least a two run average) provides a better degree of confidence in the compliance assessment.

Comment: The commenters state that ''there are inadequate safeguards built into the rule to assure that averaging is only used to remedy random results that are a result of inaccurate test methods.'' The commenters cite example test results included in IEPA's testimony during its rule adoption process (test results of 201, 166, and 154 ppm, showing compliance on average with a 200 ppm limit). The commenters believe this testimony demonstrates that test result variability that IEPA views as reflecting testing variability in fact represents variability in source operations and source emission rates. The commenters believe this evidence contradicts IEPA's claims that its rule addresses modest variability in test results and not variability in source emission rates. The commenters believe that the rule allows sources to be treated as complying with applicable limits on average when in fact the sources are going in and out of compliance.

Response: Consecutive test runs on a facility that by objective measures is being operated in the same manner can yield test result differences like those

identified in IEPA's testimony. Thus, averaging three test runs is needed to improve the confidence level of the conclusion that the source is operating in or out of compliance.

Illinois' rules provide additional safeguards against finding compliance on average for a source that is moving in and out of compliance. These safeguards are based on restrictions that three run averaging is permissible only for sources with steady state emissions.

Comment: The commenters are concerned in particular that variations in emissions can arise from variations in source operations. The commenters observe that ''[i]t is not possible to define every operating parameter in the testing plan.'' As a result, the commenters conclude that the rule does not prevent facilities from either intentionally or unintentionally varying operations so that excessive emissions in one test run do not recur in the next test runs.

Response: Testing plans are generally designed with the most important operating parameters set to have maximum emissions. If variation of parameters not addressed in the testing plan were found to affect emissions significantly, this could signify that the test results do not truly assess whether the facility complies with the limit under the normal range of routine operating conditions. If so, an additional test may be required. However, in most cases, variations in results among test runs can be attributed largely to testing variability, such that the test provides a valid indication of whether the facility complies with the limit in routine operation.

Comment: The commenters object that ''insufficient information is included regarding the test plans for the commenters to determine whether * * * testing in accordance with a valid test plan will assure the reliability of emission test averaging.''

Response: Due to the variety of facilities to be tested, it is not possible for a testing rule to specify the parameters that would be necessary to address for every situation. Therefore, it is essential that a process be established by which the State, with EPA oversight, can evaluate each testing plan individually. EPA believes that the State's rule provides for proper governmental review of each testing plan on a case-by-case basis.

Comment: The commenters express concern about provisions for ''minor deviations'' from submitted test plans. In particular, the commenters state that the absence of a definition of the operating parameters in test plans results in insufficient guarantees against changes in critical parameters between test runs.

Response: The range of circumstances requiring minor deviations from planned testing procedures is as wide as the range of relevant operating parameters. Furthermore, the minor deviations authorized here generally apply to the entire set of test runs, typically to address site-specific circumstances where the state finds that the full test may be run under conditions deviating slightly from the planned conditions without affecting the results of the test. An example of a minor deviation would be an incinerator that is operating slightly cooler than was anticipated in the test plan, in circumstances where the alternate temperature does not significantly affect emissions. For the range of facilities covered by this general testing rule, the need for minor deviations from standard testing methods is inevitable, and yet the range of necessary deviations cannot be predicted or readily defined. The need for government concurrence with the minor deviation is a safeguard against deviations pursued to underrepresent emissions. Thus, Illinois has adopted a reasonable approach to addressing site-specific circumstances where minor modifications of testing procedures are appropriate.

Comment: The commenters believe that variations in results among test runs should not be assumed to reflect imprecision in test results. The commenters observe that variations in operating parameters as well as plant equipment and malfunctions are just as likely as variations resulting from test imprecision.

Response: Illinois reviews test reports to assess whether circumstances arose during the test that would significantly affect emissions. Tests done during a facility malfunction or during other abnormal operations significantly affecting emissions would generally not be in accordance with the test plan, and the test would not be considered a valid test. In most cases, it is reasonable to attribute most of the variations among results among three test runs to testing uncertainties.

Comment: The commenters express concern that facilities, who get ''benefit of the assumption * * * of imprecise testing methods'' are ''also responsible for maintaining the testing equipment and conducting the test.''

Response: The comment seems intended to imply a concern that the facility operators have an incentive to maintain the testing equipment poorly and conduct the test imprecisely. In fact, most tests are done by contractors, whose livelihoods depend on conducting tests as reliably as possible. Even for facility-run tests, greater imprecision does not benefit the facility, since imprecision does not preferentially lead to a lower average emission value. On the contrary, greater imprecision increases the risk that a complying facility could have three test runs with average emissions above the applicable limit.

Comment: The commenters recommend alternatives to averaging of three test runs. The commenters recommend that more than three test runs be conducted. The commenters further recommend that the State (and EPA) be granted the discretion to evaluate test results ''with outliers examined on a case by case basis to determine if they were a violation in fact or if it was a failure of testing methods.'' The commenters also suggest the possibility of conducting multiple tests with different testing equipment and the possibility of operators ''running the facility with emissions further within the limits''.

Response: Illinois' rule seeks to establish standard practice for conducting and evaluating tests. Illinois makes the recommended choice in stipulating that mass emission tests shall generally consist of three test runs. Illinois further applies standard, recommended practice by averaging the results of the test runs, thereby improving the reliability of the conclusions drawn. Illinois (and EPA) retain the option to require further tests if variability in test results or other factors indicate that the conducted test does not adequately assess whether the facility complies with applicable limits under all operating conditions. It would be inappropriate for Illinois to require use of multiple sets of testing equipment on a routine basis or to require facilities to emit below the applicable limit by an amount that reflects testing uncertainties.

The discretion that the commenters recommend, for examining outliers on a case by case basis, is in fact granted in the rule. In examining test results, Illinois (and EPA) examine the variability from run to run and assess whether operating conditions were held constant. If Illinois (or EPA) concludes that operating conditions varied, causing significant variations in emissions, the rules provide for a conclusion that the facility did not have steady state emissions and therefore did not qualify for averaging of three test runs. More generally, if Illinois (or EPA) simply concludes that the variations exceed those attributable to normal testing uncertainties, Illinois (or EPA) may find that the test is unreliable and

request a retest. If, on the other hand, the variation in test results is judged to reflect normal variability in test measurements, then the rule provides for averaging of three test runs, as is appropriate to enhance the reliability of the results.

III. EPA Action

EPA is approving the revisions to Illinois' rules for emissions averaging. EPA concludes that these rules codify standard practice in preparation and review of test plans and in averaging of three test runs in assessing compliance with mass emission limits.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. section 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. section 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 8, 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, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 11, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons set out in the preamble, 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 O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(164) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(164) On October 9, 2001, the State of Illinois submitted new rules regarding emission tests.

(i) Incorporation by reference.

(A) New rules of 35 Ill. Admin. Code Part 283, including sections 283.110, 283.120, 283.130, 283.210, 283.220, 283.230, 283.240, and 283.250, effective September 11, 2000, published in the Illinois Register at 24 Ill. Reg. 14428.

(B) Revised section 283.120 of 35 Ill. Admin. Code, correcting two typographical errors, effective September 11, 2000, published in the Illinois Register at 25 Ill. Reg. 9657.

* * * * *

[FR Doc. 03–11471 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7496–2]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule clarifies a provision included in recent amendments to the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, today's final rule addresses the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act (''The Brownfields Law'') for conducting ''all appropriate inquiry.'' Today's action clarifies that, in the case of property purchased on or after May 31, 1997, the requirements for conducting ''all appropriate inquiry,'' including the conduct of such activities to qualify as a *bona fide* prospective purchaser and to establish an innocent landowner defense under CERCLA, can be satisfied through the use of ASTM Standard E1527–00, entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process.'' In addition, recipients of brownfields site assessment grants will be in compliance with the all appropriate inquiry requirements if they comply with either the ASTM Standard E1527–97, or the ASTM E1527–00 Standard.

DATES: This final rule is effective June 9, 2003.

ADDRESSES: The record for this rulemaking has been established under docket number SFUND–2002–0007. Copies of public comments received, EPA response, and all other supporting documents are available for review at the U.S. Environmental Protection Agency Docket Center located at 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. To review docket material, it is recommended that the public make an appointment by calling (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields Cleanup and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include public and private parties who, as *bona fide* prospective purchasers, contiguous property owners, or innocent landowners, purchase property and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment with a brownfields grant awarded under CERCLA section 104(k)(2)(B) may be affected by today's action. This includes State, local and tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	N/A

The list of potentially affected entities in the above table may be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities or listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATON CONTACT.**

Preamble

I. Statutory Authority
II. Background
III. Summary of Final Rule
IV. Changes from January 24, 2003 Proposed Rule
V. Response to Comments
VI. Administrative Requirements

I. Statutory Authority

This final rule clarifies provisions included in section 223 of the Small Business Liability Relief and Brownfields Revitalization Act which amends section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)) and clarifies interim standards for the conduct of ''all appropriate inquiry'' for obtaining CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grant monies.

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Law''). The Brownfields Law revises CERCLA section 101(35) and provides Superfund liability limitations for *bona fide* prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. Among the requirements added to CERCLA is the requirement that such parties undertake ''all appropriate inquiry'' into prior ownership and use of certain property.

The Brownfields Law requires EPA to develop regulations that will establish standards and practices for how to conduct all appropriate inquiry. In addition, in the Brownfields Law, Congress established, as the Federal interim standard for conducting all appropriate inquiry, the procedures of the American Society for Testing and Materials (ASTM) including Standard E1527–97 (entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process''). This interim standard applies to properties purchased on or after May 31, 1997, until EPA promulgates Federal regulations establishing standards and practices for conducting all appropriate inquiry.

On January 24, 2003, EPA published a proposed rule (68 FR 3478) that would clarify for the purposes of CERCLA section 101(35)(B), and until the Agency promulgates regulations implementing standards for all appropriate inquiry, parties may use either the procedures provided in ASTM E1527–00, entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process,'' or the standard ASTM E1527–97. Today's rulemaking constitutes EPA's final action on the proposed rule.

III. Summary of Final Rule

Today's final rule clarifies that persons may use the current ASTM standard, E1527–00 for conducting all appropriate inquiry under CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997. Such property owners also may continue to use ASTM's previous standard, E1527–97 for conducting all appropriate inquiry. In addition, parties receiving federal grant monies for the characterization and assessment of brownfields properties, may use either the 1997 or the 2000 version of the ASTM Phase I Site Assessment Standard when conducting site assessments using brownfields grant monies.

IV. Changes From the January 24, 2003 Proposed Rule

We made one minor change in the rule text. One commenter pointed out that the most recent version of the ASTM Phase I Environmental Site Assessment Standard was incorrectly referenced as ''ASTM E1527–2000'' in the proposed rule. We agree that the

correct nomenclature is ASTM E1527–00 and we made the corresponding correction in today's final rule.

The statutory cite referencing the award of brownfields assessment grants was corrected to reflect the appropriate cite.

V. Response to Comments

On January 24, 2003, EPA published a proposed rule (68 FR 3478) clarifying that both the 1997 and the 2000 version of ASTM's E1527 Phase I environmental site assessment standard may be used to comply with the interim standard for all appropriate inquiry established by Congress in the Brownfields Law. We received several comments on the proposed rule. A discussion of the significant comments follows. A complete copy of the comments and EPA's response are included in the docket for today's final rule.

One commenter, the Utah Professional Environmental Consultants Association, stated that EPA's proposal was inappropriate and biased because the site assessment method cited by EPA (the ASTM–E1527–00 standard) ''excludes methods of site auditing that do not conform to or acknowledge ASTM standards.'' The commenter also stated that ''States should be setting the standards for site assessment, not the Federal EPA, especially when the Agency is using the auditing style of a for-profit organization.''

The Ohio Department of Transportation (ODOT) commented that Ohio did not adopt the ASTM Phase I site assessment standards because it is designed for private commercial/industrial transactions and does not address ODOT's needs.

Section 101(35)(B)(iv)(II) of CERCLA provides that until EPA promulgates the regulations under (B)(ii), ''the procedures of the American Society for Testing and Materials * * * shall satisfy the requirements in clause (i).'' Thus, the decision to accept ASTM procedures was made by Congress, and not by EPA. The narrow purpose of today's rule is to recognize that there is a more recent ASTM standard than the one mentioned in the statute. In addition, EPA is developing a regulation pursuant to section 101(35)(B) that will establish new Federal standards for conducting all appropriate inquiry for the purposes of establishing liability and conducting property assessments with brownfields grants. States also are free to promulgate any standards they feel are appropriate for use in their State programs. To the extent any State has regulations establishing standards for all appropriate inquiry, EPA may consider the merits of such standards during the development of the Federal standard.

Another commenter, INTERTOX, stated that the ASTM standard ''inadequately accounts for regional differences in the availability of historical documents for the characterization of past uses of a site.'' The commenter also stated that all appropriate inquiry ''should vary according to the geographic location of the site under investigation.''

As stated in the proposed rule, the interim ASTM standard, as provided by Congress in the Brownfields Law, will be effective only until EPA promulgates regulations setting a federal standard for all appropriate inquiry. The issue of ''historical sources'' will be addressed in the subsequent rule, consistent with the statutory criteria for those standards and practices. While developing the ''all appropriate inquiry'' standards, EPA intends to consider multiple sources of information regarding technical standards and ''historical sources'' of site use.

Phase Engineering, Inc. submitted a comment pointing out that EPA incorrectly cited the most recent version of the ASTM Phase I site assessment standards as ''ASTM E1527–2000.'' The commenter pointed out that the correct nomenclature is ''ASTM E1527–00.'' Today's final rule includes the correct nomenclature.

VI. Administrative Requirements

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

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

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

Because the purpose of today's action is to make a clarification that does not create any new requirements it has no economic impact and is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

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 (64 FR 43255, August 10, 1999). In addition, this rule also does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

This rule also is not subject to Executive Order 13045 (62 FR 1985, April 23, 1997), because it is not economically significant.

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.

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996, and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together Federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply government needs for goods and services. The Act requires that Federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards. Today's action is compliant with the spirit and requirements of the NTTAA, given that the interim standard for all appropriate inquiry that is the subject of today's action is a private sector standard developed by a standard developing organization. Today's action

allows for the use of the American Society for Testing and Materials (ASTM) standard known as Standard E1527–00 and entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process'' as the interim standard for conducting all appropriate inquiry for properties purchased on or after May 31, 1997, or in the alternative, the use of Standard E1527–97, and entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process.''

Today's action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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 submitted 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 9, 2003.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

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

■ 1. Subchapter J is amended by adding new part 312 to read as follows:

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRY

Subpart A—Introduction

Sec.
312.1 Purpose and applicability.
312.2 Standards and practices for all appropriate inquiry.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart A—Introduction

§ 312.1 Purpose and applicability.

(a) *Purpose.* The purpose of this section is to provide standards and procedures for ''all appropriate inquiry'' for the purposes of CERCLA Section 103(35)(B).

(b) *Applicability.* This section is applicable to: potential innocent landowners conducting all appropriate inquiry under Section 101(35)(B) of CERCLA; *bona fide* prospective purchasers defined under Section 101(40) of CERCLA; contiguous property owners under Section 107(q) of CERCLA; and persons conducting site characterization and assessments with the use of a grant awarded under CERCLA Section 104(k)(2)(B).

§ 312.2 Standards and practices for all appropriate inquiry.

With respect to property purchases on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM) 1527–97 and the procedures of the American Society for Testing and Materials (ASTM) 1527–00, both entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process,'' shall satisfy the requirements for conducting ''all appropriate inquiry'' under Section 101(35)(B)(i)(I) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act.

[FR Doc. 03–11473 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA 1999–6086]

RIN 2130–AB15

Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; final statement of agency policy.

SUMMARY: On August 11, 1997, in compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws. This document discusses comments received in response to the Interim Policy Statement and adopts the Interim Policy Statement as the Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws, with minor edits required to update the language. The Final Policy Statement contains FRA's communication and enforcement policy statements concerning small entities subject to the railroad safety laws. FRA has in place programs that devote special attention to the unique concerns and operations of small entities in the administration of the national railroad safety compliance and enforcement program.

DATES: This policy statement is effective May 9, 2003.

FOR FURTHER INFORMATION CONTACT: (1) *Principal Program Person:* Jeffrey Horn, Office of Safety Planning and Evaluation, Federal Railroad Administration, 1120 Vermont Ave. NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6283) (2) *Principal Attorney:* Melissa Porter, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590 (tel: (202) 493–6034) (3) *Enforcement Issues:* Douglas Taylor, Operating Practices Division, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6255).

SUPPLEMENTARY INFORMATION:

I. Background

On August 11, 1997, FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws (62 FR 43024, August 11, 1997) (Interim Policy Statement) in compliance with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA). SBREFA establishes requirements for federal agencies to follow with respect to small businesses, creates duties for the Small Business Administration (SBA), and amends portions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Equal Access to Justice Act (EAJA) (5 U.S.C. 501, *et seq.*). The primary purposes of SBREFA are to implement recommendations developed at the 1995 White House Conference on Small Business, to provide small businesses enhanced opportunities for judicial review of final agency action, to encourage small business participation in the regulatory process, to develop accessible sources of information on

regulatory requirements for small business, to create a cooperative regulatory environment for small business, and to make federal regulators accountable for ''excessive'' enforcement actions.

SBREFA, among other things, requires federal enforcement agencies to institute two new policies. The first is a communication policy, described in section 213 of SBREFA, in which each agency must ''answer inquiries by small entities concerning information on, and advice about, compliance with'' statutes and regulations within the agency's jurisdiction, ''interpreting and applying the law to specific sets of facts supplied by the small entity.'' The second is an enforcement policy, required by section 223 of SBREFA, in which each agency must establish a program to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

SBREFA incorporates the definition for ''small entity'' that is established by existing law (5 U.S.C. 601, 15 U.S.C. 632, 13 CFR part 121) for those businesses to be covered by the agency policies. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in its field of operation. SBREFA defines ''small governmental jurisdictions'' that serve populations of 50,000 or less as small entities. An agency may establish one or more other definitions for this term, in consultation with the SBA and after opportunity for public comment, that are appropriate to the agency's activities.

In the Interim Policy Statement, FRA invited comments on the definition of ''small entity,'' potential alternative definitions, and supporting rationale for suggested alternative definitions. FRA also held a public meeting on September 28, 1999 to further explore the issue.

II. Definition of Small Entity in the Railroad Industry

Pursuant to its statutory authority, the SBA promulgated regulations that clarify the term ''small entity'' by industry, using number of employees or annual income as criteria. 13 CFR 121.101–108, and 201. In the SBA regulations, main line railroads with 1500 or fewer employees, and switching or terminal establishments with 500 or fewer employees constitute small entities. The SBA regulations do not address hazardous material shippers in the railroad industry, or commuter railroads. However, commuter railroads are governmental jurisdictions, and some may fit within this statutory delineation for small governmental jurisdictions, or small entities addressed in SBREFA.

Prior to the SBA regulations establishing size categories, the Interstate Commerce Commission (ICC) developed a classification system for freight railroads as Class I, II or III, based on annual operating revenue. (The detailed, qualifying criteria for these classifications are set forth in 49 CFR part 1201.) The Department of Transportation's Surface Transportation Board (STB), which succeeded the ICC, has not changed these classifications. The ICC classification system has been used pervasively by FRA and the railroad industry to identify entities by size. The SBA recognizes this classification system as a sound one, and concurred with FRA's decision to use it in the Interim Policy Statement, provided the public has notice of the classification system in use for any particular proceeding and an opportunity to comment on it.

In the Interim Policy Statement, FRA defined ''small entity,'' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Equal Access to Justice Act (5 U.S.C. 501, *et seq.*), to include only those railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous material shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.

III. Analysis of Comments

FRA received ten comments regarding the definition of a small entity (which can be accessed on-line at DOT's Docket Management System at *http://dms.dot.gov*). FRA also received additional comments from several organizations during the public meeting held on September 28, 1999. While a number of commenters expressed the view that FRA has been very helpful and flexible in its approach to dealing with small businesses, commenters differed on their proposed definitions of ''small entity.''

Two small railroads agreed that FRA should retain the definition of a small railroad, as it has been used historically, and as it was used in the Interim Policy Statement: Class III railroads. One other commenter also agreed with that definition, and also agreed with FRA's definitions for other entities: contractors and hazardous materials shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and small governmental jurisdictions or commuter railroads that serve populations of 50,000 or less.

The American Short Line Railroad Association (ASLRA) (now The American Short Line and Regional Rail Association) suggested the most expansive definition, proposing that FRA regard all entities classified as Class II and Class III carriers by the Surface Transportation Board (STB) as small entities. ASLRA did not address application of the definition to hazardous materials shippers, contractors, governmental units, or commuter operations. ASLRA believes that its proposed definition is consistent with SBA's ''1500 employees for main line railroads'' and ''500 employees for switching or terminal establishments'' definitions because the SBA's definition would include all except one Class II and Class III carriers. ASLRA also claimed that the definition would not impose any additional burdens on FRA beyond what FRA already undertakes during its communication and enforcement processes. However, as ASLRA commented, ''FRA has consistently recognized the special needs of Class II and Class III railroads, and has specially tailored its regulatory requirements or implementation dates for them in many instances.'' As noted, FRA does have a history of being very responsive to entities' concerns during its rulemaking and enforcement processes, and does not feel that Class II entities have been adversely affected by FRA's treatment of their concerns. FRA will continue to address those concerns in its regulatory and enforcement actions. Nevertheless, including Class II railroads as small entities in this policy would require that FRA provide those railroads, which are of considerable size and sophistication (with annual operating revenues of up to $250 million), the benefits of the agency's communication and enforcement policies, which are clearly designed for much smaller entities that truly merit such special attention. FRA will continue to provide compliance guidance and consideration of financial condition to any particular Class II railroad entity that needs these actions, but will not include all of the Class II entities within these policies because they are intended for a class of railroads much more likely to need such actions. As such, FRA sees no justification in expanding its current definition of a

small entity to meet ASLRA's proposed definition.

Several other entities suggested a narrower definition, limiting the definition of a small entity to those entities having less than a total of 400,000 annual employee hours. Some commenters also included other qualifiers, such as including operating revenue as a qualifying threshold. Commenters generally believed applying these measures would ensure consistent treatment to all entities throughout the railroad industry, regardless of whether they are a carrier, switching or terminal operation, hazardous materials shipper, or contractor. The National Railroad Construction and Maintenance Association (NRC) believed that for contractors specifically, this approach was fairer than applying the STB's Class I, II, and III monetary thresholds. The NRC claimed that operating revenues for contractors are sometimes artificially high because labor and material costs are included in the contract price, thereby potentially putting a small contractor above the $20 million threshold set by the STB.

Other commenters agreed with NRC that 400,000 annual employee hours was an appropriate measure that would ensure consistency, yet felt that further limiting those entities to $20 million in annual operating revenues would eliminate the possibility that larger railroads would sneak into the ''small entity'' category if they increase operating efficiencies, and thereby limit employee hours. The Brotherhood of Maintenance of Way Employes also proposed that all hours of persons engaged in the operation or maintenance of a railroad or its infrastructure (*i.e.*, railroad contract employees or volunteers) be included in the total annual employee hours calculation to avoid underreporting of actual work performed for one railroad. The theory is that if contractor hours are not included in the total employee hour calculation, a railroad who is above the 400,000 annual employee hour threshold could contract out most of its work to reduce its total employee hours, so that it could still receive ''small entity'' treatment.

Although FRA has used the 400,000 annual employee hour designation when conducting regulatory analyses for several rules, FRA has also used the Class I, II, and III categories to differentiate compliance dates when necessary to lessen the burden on small entities. FRA believes that, although the 400,000 annual employee hour criterion is useful in certain rules, the use of STB's Class III definition as its measure of a small entity for carriers, switching and terminal operations, hazardous materials shippers, and contractors is more appropriate for the purposes of this broad policy. Under the Final Policy Statement issued today, FRA retains the ability to use different criteria to tailor the applicability of any regulations it issues to address appropriately the specific safety problem at issue. For example, even though FRA is retaining the Class III standard for ''small entity'' for its communication and enforcement policy purposes, FRA may issue a rule that applies only to railroads with more than a certain number of annual employee hours or to all railroads, regardless of size.

The American Public Transit Association (APTA), which represents several commuter operations, proposed that FRA define rail systems with less than 200 cars as small entities. APTA believes there are very few entities that would fit the definition of operations serving populations of 50,000 or less. FRA did not believe the 200-car limit was a useful distinction, and determined it is appropriate to retain commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less (a standard based on SBREFA's own definition of a small governmental jurisdiction) as its definition of a small commuter railroad.

The September 28, 1999 public meeting gave commenters an opportunity to iterate many of the same ideas expressed in the written comments FRA received. Aside from the merits of each definition, the attendees discussed the logistics of tracking the number of small entities for the proposed definitions. For example, if FRA adopts STB's definition, how will FRA ensure that STB is keeping accurate records of Class III carriers? STB requires regular reporting of the necessary information, and FRA has complete confidence in that process. Attendees also discussed what effect the number of entities considered ''small entities'' would have on FRA's litigation costs under the EAJA. FRA notes that the only provisions of EAJA affected by this definition are 5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D). These provisions permit recovery of costs and fees only if a civil penalty demand is held to be substantially in excess of the judgment finally obtained, and is unreasonable when compared with that judgment. Because FRA pays special attention to the circumstances of small entities in assessing or collecting civil penalties, such a situation is extremely unlikely. The definition of ''small entity'' contained in this policy has no effect on EAJA claims brought in response to other types of agency action; such claims are governed by the EAJA definition of ''party.'' Note that the principles concerning the aggregation of company affiliates set forth in DOT's regulations at 49 CFR 6.7(f) apply to this definition for purposes of claims brought under EAJA.

FRA indicated in the Interim Policy Statement that the Final Policy Statement would establish a definition of ''small entity'' for Regulatory Flexibility Act (RFA) purposes. While FRA will generally use the ''small entity'' definition adopted here in doing RFA analyses, it needs to retain sufficient flexibility to use a different definition if appropriate in the context of a particular RFA analysis. FRA has, and will continue to comply with the RFA's provisions requiring notice and comment, and consultation with the Small Business Administration's Office of Advocacy, when it uses a definition of ''small entity'' that differs from that adopted here to complete RFA analyses.

IV. FRA's Small Business Communication and Enforcement Programs

FRA's purpose in publishing this policy statement is to formally announce and explain its communication and enforcement policies concerning small entities in the railroad industry, which have already existed for some time. FRA is hopeful that this publication will, in addition to achieving compliance with the SBREFA requirements, enhance railroad safety in several ways: (1) Increase the number of small entities that participate cooperatively in the safety compliance and enforcement program; (2) better inform small businesses of railroad safety requirements; (3) encourage small entities to communicate more freely with agency personnel to alleviate potential safety risks before they become hazardous; and (4) improve FRA's understanding of small operations.

FRA's small business communication program has existed for some time, and continues to grow to meet the needs of our customers in the railroad industry. FRA Office of Safety and Office of Chief Counsel personnel, at the headquarters, regional and local level, devote a great deal of attention to the inquiries and concerns of small entities. FRA's program is flexible and responsive to the particular need expressed. The agency's response takes a variety of forms: oral and written answers to questions received, training sessions for new or existing small businesses on the substance of railroad safety regulations, and advice on a particular standard or

interpretation of a standard. Some of the FRA Regional Administrators have established programs in which small entities in the region meet with FRA regional specialists on a regular basis to discuss new regulations, persistent safety concerns, developing technology, and on going compliance issues. FRA regional offices hold yearly conferences in which specific blocks of time are set aside to meet with small businesses and hear their concerns. In addition, FRA has instituted innovative programs that expand our existing communication policy for small entities. The Railroad Safety Advisory Committee (RSAC) plays an integral role in the development of railroad safety regulations, and includes representatives of small businesses.

Similarly, FRA's enforcement program devotes special attention to ensuring that the limited financial resources of small entities are considered during the enforcement process. FRA inspectors have and utilize discretion when determining whether a civil penalty citation or other enforcement action should be taken against a small entity. Staff attorneys in FRA's Office of Chief Counsel regularly assess information provided by a company concerning the degree to which fines will impact the viability of a small business, and the extent to which a fine may prevent the business from improving the safety of its operation. In fact, the federal railroad safety laws include the requirement that agency personnel consider a respondent's ability to pay in any civil penalty action taken. 49 U.S.C. 21301–21303. Staff attorneys regularly invite small entities to present information concerning financial status and other factors that may result in a reduction or waiver of penalty assessments. This policy statement will be codified in the Code of Federal Regulations as an appendix to 49 CFR part 209, so that all members of the public have access to it as needed. The terms ''small business'' and ''small entity'' have identical meaning for purposes of this document, and are used interchangeably throughout.

The Final Policy Statement issued today is substantially the same as the Interim Policy Statement. However, FRA edited language that has become outdated since the initial statement was published, and further clarified FRA's position in some instances, none of which alter the substance of the policy statements themselves. FRA also added language that makes clear that the Final Policy Statement's definition of ''small entity'' is applicable to RFA, and to the ''excessive demand'' provisions in the EAJA, but not other provisions of that law.

List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Penalties, Railroad Safety, Reporting and recordkeeping requirements.

The Policy Statement

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

■ 2. A new Appendix C is added to 49 CFR part 209 to read as follows:

Appendix C to Part 209—FRA's Policy Statement Concerning Small Entities

This policy statement required by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) explains FRA's communication and enforcement policies concerning small entities subject to the federal railroad safety laws. These policies have been developed to take into account the unique concerns and operations of small businesses in the administration of the national railroad safety program, and will continue to evolve to meet the needs of the railroad industry. For purposes of this policy statement, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the ''excessive demand'' provisions of the Equal Justice Act (5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D)), Class III railroads, contractors and hazardous materials shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less constitute the class of organizations considered ''small entities'' or ''small businesses.''

FRA understands that small entities in the railroad industry have significantly different characteristics than larger carriers and shippers. FRA believes that these differences necessitate careful consideration in order to ensure that those entities receive appropriate treatment on compliance and enforcement matters, and enhance the safety of railroad operations. Therefore, FRA has developed programs to respond to compliance-related inquiries of small entities, and to ensure proper handling of civil penalty and other enforcement actions against small businesses.

Small Entity Communication Policy

It is FRA's policy that all agency personnel respond in a timely and comprehensive fashion to the inquiries of small entities concerning rail safety statutes, safety regulations, and interpretations of these statutes and regulations. Also, FRA personnel provide guidance to small entities, as needed, in applying the law to specific facts and situations that arise in the course of railroad operations. These agency communications take many forms, and are tailored to meet the needs of the requesting party.

FRA inspectors provide training on the requirements of all railroad safety statutes and regulations for new and existing small businesses upon request. Also, FRA inspectors often provide impromptu training sessions in the normal course of their inspection duties. FRA believes that this sort of preventive, rather than punitive, communication greatly enhances railroad safety. FRA's Office of Safety and Office of Chief Counsel regularly provide oral and written responses to questions raised by small entities concerning the plain meaning of the railroad safety standards, statutory requirements, and interpretations of the law. As required by the SBREFA, when FRA issues a final rule that has a significant impact on a substantial number of small entities, FRA will also issue a compliance guide for small entities concerning that rule.

It is FRA's policy to maintain frequent and open communications with the national representatives of the primary small entity associations and to consult with these organizations before embarking on new policies that may impact the interests of small businesses. In some regions of the country where the concentration of small entities is particularly high, FRA Regional Administrators have established programs in which all small entities in the region meet with FRA regional specialists on a regular basis to discuss new regulations, persistent safety concerns, emerging technology, and compliance issues. Also, FRA regional offices hold periodic conferences, in which specific blocks of time are set aside to meet with small businesses and hear their concerns.

In addition to these communication practices, FRA has instituted an innovative partnership program that expands the extent to which small entities participate in the development of policy and process. The Railroad Safety Advisory Committee (RSAC) has been established to advise the agency on the development and revision of railroad safety standards. The committee consists of a wide range of industry representatives, including organizations that represent the interests of small business. The small entity representative groups that sit on the RSAC may appoint members of their choice to participate in the development of new safety standards. This reflects FRA's policy that small business interests must be heard and considered in the development of new standards to ensure that FRA does not impose unnecessary economic burdens on small businesses, and to create more effective standards. Finally, FRA's Web site (*http://www.fra.dot.gov*) makes pertinent agency information available instantly to the public.

FRA's longstanding policy of open communication with small entities is apparent in these practices. FRA will make every effort to develop new and equally responsive communication procedures as is warranted by new developments in the railroad industry.

Small Entity Enforcement Policy

FRA has adopted an enforcement policy that addresses the unique nature of small entities in the imposition of civil penalties and resolution of those assessments. Pursuant to FRA's statutory authority, and as described in Appendix A to 49 CFR part 209, it is FRA's policy to consider a variety of factors in determining whether to take enforcement action against persons, including small entities, who have violated the safety laws and regulations. In addition to the seriousness of the violation and the person's history of compliance, FRA inspectors consider ''such other factors as the immediate circumstances make relevant.'' In the context of violations by small entities, those factors include whether the violations were made in good faith (*e.g.,* based on an honest misunderstanding of the law), and whether the small entity has moved quickly and thoroughly to remedy the violation(s). In general, the presence of both good faith and prompt remedial action militates against taking a civil penalty action, especially if the violations are isolated events. On the other hand, violations involving willful actions and/or posing serious health, safety, or environmental threats should ordinarily result in enforcement actions, regardless of the entity's size.

Once FRA has assessed a civil penalty, it is authorized to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors, unless FRA must terminate the claim for some reason. FRA has the discretion to reduce the penalty as it deems fit, but not below the statutory minimums. The mitigating criteria FRA evaluates are found in the railroad safety statutes and SBREFA: The severity of the safety or health risk presented; the existence of alternative methods of eliminating the safety hazard; the entity's culpability; the entity's compliance history; the entity's ability to pay the assessment; the impacts an assessment might exact on the entity's continued business; and evidence that the entity acted in good faith. FRA staff attorneys regularly invite small entities to present any information related to these factors, and reduce civil penalty assessments based on the value and integrity of the information presented. Staff attorneys conduct conference calls or meet with small entities to discuss pending violations, and explain FRA's view on the merits of any defenses or mitigating factors presented that may have resulted or failed to result in penalty reductions. Among the ''other factors'' FRA considers at this stage is the promptness and thoroughness of the entity's remedial action to correct the violations and prevent a recurrence. Small entities should be sure to address these factors in communications with FRA concerning civil penalty cases. Long-term solutions to compliance problems will be given great weight in FRA's determinations of a final settlement offer.

Finally, under FRA's Safety Assurance and Compliance Program (SACP), FRA identifies systemic safety hazards that continue to occur in a carrier or shipper operation, and in cooperation with the subject business, develops an improvement plan to eliminate those safety concerns. Often, the plan provides small entities with a reasonable time frame in which to make improvements without the threat of civil penalty. If FRA determines that the entity has failed to comply with the improvement plan, however, enforcement action is initiated.

FRA's small entity enforcement policy is flexible and comprehensive. FRA's first priority in its compliance and enforcement activities is public and employee safety. However, FRA is committed to obtaining compliance and enhancing safety with reasoned, fair methods that do not inflict undue hardship on small entities.

Issued in Washington, DC on May 1, 2003.

Allan Rutter,

Administrator.

[FR Doc. 03–11450 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 68, No. 90
Friday, May 9, 2003

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

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations (Part 255); Statements of General Policy (Part 399)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Proposed rule; notice extending comment period.

SUMMARY: The Department has issued a notice of proposed rulemaking that proposes to readopt and amend its existing rules governing airline computer reservations systems (CRSs) and to clarify the requirements of its Statements of General Policy on travel agency disclosure of any agency service fees. The Department is now extending the due date for reply comments on this notice of proposed rulemaking to June 9, 2003, from the current date of May 15, 2003.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket number OST–97–2881) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department has begun a rulemaking to reexamine whether it should maintain its existing rules governing CRS operations. We issued a notice of proposed rulemaking that set forth our tentative conclusions on whether the rules should be readopted, whether we should extend the rules to cover the sale of airline tickets through the Internet, and whether we should clarify our full-fare advertising policy insofar as it concerns the disclosure of travel agency service fees. (67 FR 69366, November 15, 2002). We have stated that we intend to hold a public hearing in this rulemaking between the March 17 due date for comments and the due date for reply comments, currently May 15. (68 FR 12883, March 18, 2003).

Several firms and organizations have filed comments in response to our stated intent to hold a public hearing. They have made various suggestions on how the hearing should be structured and when it should be scheduled, including proposals to hold the hearing after the filing of reply comments and requests that we take into account the commenters' need for adequate time to prepare both reply comments and a hearing presentation. We continue to believe that we will obtain a more useful record if we hold the hearing before the submission of reply comments. We are currently planning to schedule the hearing, which will last one day, on Tuesday, Wednesday, or Thursday, May 20, 21, or 22, in the Washington, DC, area, and are in the process of arranging for a room for the hearing. We will provide notice as soon as possible on the time and place of the hearing.

To enable the commenters to respond in their reply comments to arguments made at the hearing, we are extending the due date for reply comments to June 9. This extension will also give commenters a better opportunity to prepare for a hearing and write thorough reply comments without significantly delaying our completion of this proceeding.

Issued in Washington, DC on May 6, 2003.

Kirk K. Van Tine,
General Counsel.

[FR Doc. 03–11634 Filed 5–6–03; 2:53 pm]

BILLING CODE 4910–62–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF33

Revised Medical Criteria for Evaluating Immune System Disorders

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules that we use to evaluate immune system disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are sections 14.00 and 114.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating immune system disorders, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas for how we may be able to improve our programs for people who have immune system disorders, especially those who would like to work.

DATES: To be sure your comments are considered, we must receive them by July 8, 2003.

ADDRESSES: You may give us your comments using: our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or, by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.ssa.gov/regulations/.*

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1769 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate immune system disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with immune system disorders.

Who Should Send Us Comments and Suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have immune system disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for people who have immune system disorders, experts in the evaluation of immune system disorders, researchers, people who make disability determinations for us, and any other people who may have ideas for us to consider.

Will We Respond to Your Comments from This Notice?

No, we will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as medical research and our program experience, we will decide how to revise the rules we use to evaluate immune system disorders. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Which Rules Are We Considering for Updating and Revising?

We are considering two sections of our listings for revision, sections 14.00 and 114.00. These are the listings for immune disorders for adults (Part A, 14.00) and children (Part B, 114.00). It includes such disorders as HIV infection, other Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, Systemic Lupus Erythematosus, Scleroderma, Polymyositis, Inflammatory Arthritis, and other connective tissue disorders.

Where Can You Find These Rules on the Internet?

You can find these rules on our Internet site at these locations:

- Sections 14.00 and 114.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at: *http://www.ssa.gov/OP_Home/cfr20/404/404-ap09.htm.*
- You can also look up sections 14.00 and 114.00 at: *http://www.ssa.gov/disability/professionals/bluebook/.*
- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Why Are We Updating and Revising Our Rules for Evaluating Immune System Disorders?

- The current listings for immune system disorders for adults (14.00) and children (114.00) will no longer be in effect on July 2, 2003, unless we extend them or revise and promulgate them again, so we must consider now whether to update and revise them.

We published final rules on July 2, 1993, which established body system listings in part A and part B of the listings for immune system disorders (58 FR 36008). We made those rules effective for five years from the date of publication, unless we extended them, or revised and issued them again (58 FR 36051). Since that time, we have extended the expiration date of the immune body system listings. Most recently, on June 28, 2001, we published rules that extended the effective date of the current immune system listings until July 2, 2003 (66 FR 34361). Although we published final rules in the **Federal Register** revising some of the immune system listings on November 19, 2001 (66 FR 58009), we have not comprehensively revised them since 1993.

We will be considering information from many sources, including the following recent documents, for relevance to our policy for evaluating immune system diseases.

- Kippel, J., Weyand, C., & Wortmann, R. (Eds.). (1997). Primer on the Rheumatic Diseases, (11th ed.). Atlanta: Arthritis Foundation.
- Davidson, A. & Diamond, B. (2001). Autoimmune Diseases. The New England Journal of Medicine, 345(5), 1–21.
- Marmont, A. (2000). New Horizons in the Treatment of Autoimmune Diseases: Immunoablation and Stem Cell Transplantation. Annual Reviews, 51, 115–134.
- Nash, R.A. (2000). Prospects of Stem Cell Transplantation in Autoimmune Diseases. Journal of Clinical Immunology, 20(1), 38–45.
- Sicherer, S.H. (*et al.*). (1998). Primary Immunodeficiency Diseases in Adults. Journal of American Medical Association, 279:58.

What Should You Comment About?

We are interested in any comments and suggestions you have for revising sections 14.00 and 114.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You have concerns about any of the current listings provisions for adults or children; such as whether you think we should change any of our criteria or

whether you think a listing is difficult to use or understand.

- You would like to see our listings include something that they do not include now.

You can also make any other comments or suggestions to help us improve our rules for evaluating claims for benefits filed by adults and children who have immune system disorders.

In addition to your comments about our regulations, we are also interested in any ideas you have about how the disability requirements of the Act and our regulations affect people who have immune system disorders, especially those who would like to work, full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. For example, we know that many people who have immune system disorders might not need benefits from us if they could get treatment before their disorders make them unable to work. Others may be unable to work but may not need to stay out of work indefinitely if they could get treatment or other interventions. Many people with permanent disorders can work if they have a supporting safety net (including title II disability benefits and SSI payments). Work can also be therapeutic for some people. Although the Act and our regulations include some access to health care through Medicare and Medicaid, some provision for vocational rehabilitation, and a number of work incentives, these provisions are generally for people who already qualify for benefits under our disability programs.

We are interested in your ideas for how we may be able to improve our programs for people who have immune system disorders, especially those who would like to work full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

Other Information

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) as described above and that results in * * *
title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
title XVI	a person age 18 or older	the inability to do any SGA.
title XVI	a person under age 18	marked and severe functional limitations.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity, or that result in ''marked and severe functional limitations'' in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits simply because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.) If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 16, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–11491 Filed 5–8–03; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–164754–01]

RIN 1545–BA44

Split-Dollar Life Insurance Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the valuation of economic benefits under certain equity split-dollar life insurance arrangements. The proposed regulations will provide needed guidance to persons who enter into split-dollar life insurance arrangements. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by July 8, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 29, 2003, must be received by July 8, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–164754–01), 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–164754–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, please contact Elizabeth Kaye at (202) 622–4920. To be placed on the attendance list for the hearing, please contact LaNita Van Dyke at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background and Overview of Notice of Proposed Rulemaking

1. Summary of the Prior Notice of Proposed Rulemaking

On July 9, 2002, a notice of proposed rulemaking (REG–164754–01) was published in the **Federal Register** (67 FR 45414) proposing comprehensive rules for the income, gift, and employment taxation of equity and non-equity split-dollar life insurance arrangements (the 2002 proposed regulations). The 2002 proposed regulations will apply to split-dollar life insurance arrangements entered into after the date final regulations are published in the **Federal Register** and to arrangements entered into on or before that date that are materially modified after that date. Under certain conditions, taxpayers may rely on the 2002 proposed regulations for split-dollar life insurance arrangements entered into on or before the date final regulations are published in the **Federal Register**.

In general, a split-dollar life insurance arrangement is an arrangement between two or more parties to allocate the policy benefits and, in some cases, the costs of a life insurance contract. Under a so-called equity split-dollar life insurance arrangement, one party to the arrangement typically receives an interest in the policy cash value (or equity) of the life insurance policy disproportionate to that party's share of policy premiums. That party also typically receives the benefit of current life insurance protection under the arrangement. Under a so-called non-equity split-dollar life insurance arrangement, one party typically provides the other party with current life insurance protection but not any interest in the policy cash value.

The 2002 proposed regulations provide two mutually exclusive regimes for taxation of split-dollar life insurance arrangements—a loan regime and an economic benefit regime. Under the loan regime (which is set forth in § 1.7872–15 of the 2002 proposed regulations), the non-owner of the life insurance contract is treated as loaning the amount of its premium payments to the owner of the contract. The loan regime generally will govern the taxation of collateral assignment arrangements. Under the economic benefit regime (which is set forth in § 1.61–22(d) through (g) of the 2002 proposed regulations), the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract. The economic benefit regime generally will govern the taxation of endorsement arrangements.

The 2002 proposed regulations reserved on the rules for valuing economic benefits provided to the non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime, pending receipt of comments from interested parties. The preamble to the 2002 proposed regulations notes that any proposal ''for a specific methodology should be objective and administrable'' and describes a potential approach under which the non-owner would include in income the difference between current premium payments and the net present value of the amount to be repaid to the owner in the future.

A public hearing on the 2002 proposed regulations was held on October 23, 2002. In addition, interested parties have submitted detailed comments on the 2002 proposed regulations, including comments on the valuation of economic benefits provided to a non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime.

2. Explanation of Provisions and Summary of Comments

a. Overview

These proposed regulations, which supplement the 2002 proposed regulations, provide guidance on the valuation of economic benefits (including the valuation of an interest in policy cash value) under an equity split-dollar life insurance arrangement governed by the economic benefit regime. These proposed regulations apply for purposes of Federal income, employment, and gift taxes.

These proposed regulations address only those comments received by the IRS and the Treasury Department on the valuation of economic benefits under an equity split-dollar life insurance arrangement governed by the economic benefit regime. Comments received on other issues regarding the 2002 proposed regulations and comments on these proposed regulations will be addressed when both sets of proposed regulations are finalized.

These proposed regulations provide that in the case of an equity split-dollar life insurance arrangement, the value of the economic benefits provided to the non-owner under the arrangement for a taxable year equals the cost of any current life insurance protection provided to the non-owner, the amount of policy cash value to which the non-owner has current access (to the extent that such amount was not actually taken into account for a prior taxable year), and the value of any other economic benefits provided to the non-owner (to the extent not actually taken into account for a prior taxable year). The terms *owner* and *non-owner* are defined in § 1.61–22(c)(1) and (2) of the 2002 proposed regulations.

b. Current Access to Policy Cash Value

Generally, under an equity split-dollar life insurance arrangement governed by the economic benefit regime, the owner of the life insurance contract pays policy premiums, thereby establishing a pool of assets with respect to which the non-owner has certain rights under the arrangement (for example, rights of withdrawal, borrowing, surrender, or assignment). Additionally, the pool of assets is held by a third party, the life insurance company, effectively placing the cash value beyond the reach of the employer or the employer's general creditors in many cases. Thus, an equity split-dollar life insurance arrangement confers on the non-owner rights to

direct or indirect economic enjoyment of policy cash value, making current taxation of the non-owner's interest in the cash value appropriate under the doctrines of constructive receipt, economic benefit, and cash equivalence.

These proposed regulations provide that the non-owner has current access to any portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors. For this purpose, ''access'' is to be construed broadly and includes any direct or indirect right under the arrangement of the non-owner to obtain, use, or realize potential economic value from the policy cash value. Thus, for example, a non-owner has current access to policy cash value if the non-owner can directly or indirectly make a withdrawal from the policy, borrow from the policy, or effect a total or partial surrender of the policy. Similarly, for example, the non-owner has current access if the non-owner can anticipate, assign (either at law or in equity), alienate, pledge, or encumber the policy cash value or if the policy cash value is available to the non-owner's creditors by attachment, garnishment, levy, execution, or other legal or equitable process. Policy cash value is inaccessible to the owner if the owner does not have the full rights to policy cash value normally held by an owner of a life insurance contract. Policy cash value is inaccessible to the owner's general creditors if, under the terms of the split-dollar life insurance arrangement or by operation of law or any contractual undertaking, the creditors cannot, for any reason, effectively reach the full policy cash value in the event of the owner's insolvency.

In a typical equity split-dollar life insurance arrangement, the non-owner has current access to all portions of the policy cash value in excess of the amount payable to the owner. In many arrangements, the non-owner may also have current access to the portion of the cash value payable to the owner if, for example, that portion of the policy cash value is for any reason not accessible to the owner or the owner's general creditors.

Under these proposed regulations, policy cash value is determined without regard to surrender charges or other similar charges or reductions. To provide uniformity, certainty, and administrative ease, policy cash value generally is determined on the last day of the non-owner's taxable year. In addition, solely for purposes of employment tax (as defined in § 1.61–22(c)(5) of the 2002 proposed regulations) and the penalty for failure to pay estimated income taxes, the portion of the policy cash value that is treated as provided by the owner to the non-owner during the non-owner's taxable year is treated as so provided on the last day of that taxable year. The IRS and the Treasury Department request comments regarding circumstances in which it might be appropriate to use a different date for employment tax withholding purposes.

Several commentators on the 2002 proposed regulations asserted that those regulations were contrary to the intention, announced by the IRS and the Treasury Department in Notice 2002–8 (2002–1 C.B. 398), to publish proposed regulations that will not treat an owner as having made a transfer of a portion of the cash surrender value of a life insurance contract to a non-owner for purposes of section 83 solely because interest or other earnings credited to the cash surrender value of the contract cause the cash surrender value to exceed the portion thereof payable to the owner. The valuation methodology described in these proposed regulations, however, does not treat an owner as having made a transfer under section 83 solely because of growth in policy cash value. Rather, this approach, consistent with the doctrines of constructive receipt, economic benefit, and cash equivalence, treats the non-owner as having a taxable interest in policy cash value only to the extent that the non-owner has current access to the policy cash value.

Several commentators stated that a non-owner who includes in income a portion of the policy cash value should be credited with ''inside build-up'' on that portion of the policy cash value. This result might be appropriate if there were actual transfers of ownership of the underlying life insurance contract (or a portion thereof) from the owner to the non-owner. Here, by contrast to transfers described in § 1.61–22(g) of the 2002 proposed regulations, no part of the life insurance contract is actually transferred from the owner to the non-owner by reason of the non-owner's taking policy cash value into account.

In addition, some commentators expressed the view that, under the economic benefit regime, if the policy cash value in one year is less than the policy cash value in a prior year, the non-owner should be allowed a loss to the extent this difference was included in income in the prior year. Consistent with the underlying doctrines of constructive receipt, economic benefit, and cash equivalence, a loss should not be allowed in this situation. Note, however, that under § 1.61–22(g)(4)(ii)(A) of the 2002 proposed regulations, if a life insurance contract is transferred from an owner to a non-owner (the transferee), the transferee's investment in the contract under section 72(e) will include the amount of economic benefits previously taken into account by the transferee prior to the transfer.

c. Current Term Life Insurance Protection

These proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement governed by the economic benefit regime, the value of the economic benefits provided to a non-owner for a taxable year also includes the cost of current life insurance protection provided to the non-owner. The cost of current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin. The amount of the current life insurance protection (including paid-up additions thereto) provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the sum of the total amount payable to the owner (including any outstanding policy loans that offset amounts otherwise payable to the owner) under the split-dollar life insurance arrangement and the portion of the policy cash value actually taken into account for the current taxable year or for any prior taxable year. This subtraction of the portion of the policy cash value actually taken into account by the non-owner prevents the non-owner from being taxed twice on the same amount, once as part of the policy cash value to which the non-owner has current access and again as an amount provided to the non-owner in the form of death benefit protection.

d. Other Economic Benefits

These proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement governed by the economic benefit regime, the value of all other economic benefits provided to the non-owner must be taken into account (to the extent not actually taken into account for a prior taxable year). For this purpose, the term ''other economic benefits'' should be construed broadly to include any benefit, right, or feature of the life insurance contract (other than current life insurance protection and policy cash value)

provided to the non-owner under the arrangement.

Proposed Effective Date

These proposed regulations will have the same applicability date as that set forth in § 1.61–22(j) of the 2002 proposed regulations. Thus, these proposed regulations will apply to split-dollar life insurance arrangements entered into after the date final regulations are published in the **Federal Register** and to arrangements entered into on or before that date that are materially modified after that date.

In addition, taxpayers may rely on these proposed regulations for equity split-dollar life insurance arrangements entered into on or before the date final regulations are published in the **Federal Register** if the conditions in § 1.61–22(j)(2)(i) of the 2002 proposed regulations are met. For taxable years beginning after December 31, 2002, however, parties to an equity split-dollar life insurance arrangement may rely on these proposed regulations only if the value of all economic benefits taken into account by the parties is determined in accordance with these proposed regulations. These proposed regulations also conform to the early reliance rules in § 1.83–6(a)(5)(ii)(B) and § 1.301–1(q)(4)(ii) of the 2002 proposed regulations to that set forth in the preceding sentence.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 29, 2003, beginning at 10 a.m. in the IRS Auditorium in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Thus, the public hearing concerning these proposed regulations will be held on a date sooner than the usual 120 days after the date of publication of proposed regulations in the **Federal Register**. The IRS and the Treasury Department believe that this shorter period is sufficient for taxpayers to comment on these proposed regulations because the issue addressed by these proposed regulations is narrowly focused and taxpayers have already submitted comments on this issue in connection with the 2002 proposed regulations.

All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 8, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.61–22, as proposed on July 9, 2002, at 67 FR 45423, is amended as follows:

1. The text of paragraph (d)(3)(ii) is added.
2. Paragraph (j)(2)(iii) is added.

The additions read as follows:

§ 1.61–22 Taxation of split-dollar life insurance arrangements.

* * * * *

(d) * * *

(3) * * *

(ii) *Valuation of economic benefits*—

(A) *In general.* In the case of a split-dollar life insurance arrangement described in paragraph (d)(3)(i) of this section, the value of the economic benefits provided to a non-owner for a taxable year under the arrangement equals—

(*1*) The cost of current life insurance protection provided to the non-owner as determined under paragraph (d)(3)(ii)(B) of this section;

(*2*) The amount of policy cash value to which the non-owner has current access within the meaning of paragraph (d)(3)(ii)(C) of this section (to the extent that such amount was not actually taken into account for a prior taxable year); and

(*3*) The value of any economic benefits not described in paragraph (d)(3)(ii)(A)(*1*) or (*2*) of this section provided to the non-owner (to the extent not actually taken into account for a prior taxable year).

(B) *Valuation of current term life insurance protection.* In the case of a split-dollar life insurance arrangement described in paragraph (d)(3)(i) of this section, the amount of the current life insurance protection (including paid-up additions thereto) provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the sum of the total amount payable to the owner under the split-dollar life insurance arrangement and the portion of the policy cash value actually taken into account for the current taxable year or for any prior taxable year. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or

permitted in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii) of this chapter).

(C) *Current access.* For purposes of this paragraph (d)(3), a non-owner has current access to that portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors.

(D) *Valuation date*—(*1*) *General rules.* For purposes of paragraph (d)(3)(ii)(A) of this section, the policy cash value is determined on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, the policy cash value is determined on the day that the arrangement terminates.

(*2*) *Artifice or device.* Notwithstanding paragraph (d)(3)(ii)(D)(*1*) of this section, if any artifice or device is used to understate the amount of policy cash value to which the non-owner has current access on the valuation date in paragraph (d)(3)(ii)(D)(*1*) of this section, then, for purposes of paragraph (d)(3)(ii)(A) of this section, the date on which the amount of policy cash value is determined is the date on which the amount of policy cash value is greatest during that taxable year.

(E) *Policy cash value.* For purposes of this paragraph (d)(3), policy cash value is determined without regard to surrender charges or other similar charges or reductions.

(F) *Special rule for certain taxes.* For purposes of employment tax (as defined in paragraph (c)(5) of this section), and sections 6654 and 6655 (relating to the failure to pay estimated income tax), that portion of the policy cash value (as determined under paragraph (d)(3)(ii)(A)(*2*) of this section) that is treated as provided by the owner to the non-owner under paragraph (d)(1) of this section shall be treated as so provided on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, such portion of the policy cash value shall be treated as so provided on the day that the arrangement terminates.

(G) *Examples.* The following examples illustrate the rules of this paragraph (d)(3)(ii). Except as otherwise provided, both examples assume the following facts: employer (R) is the owner (as defined in paragraph (c)(1) of this section) and employee (E) is the non-owner (as defined in paragraph (c)(2) of this section) of a life insurance contract that is part of an equity split-dollar life insurance arrangement that is subject to the provisions of paragraphs (d) through (g) of this section; the contract is a life insurance contract as defined in section 7702 and not a modified endowment contract as defined in section 7702A; R does not withdraw or obtain a loan of any portion of the policy cash value and does not surrender any portion of the life insurance contract; the compensation paid to E is reasonable; E is not provided any economic benefits described in paragraph (d)(3)(ii)(A)(*3*) of this section; E does not make any premium payments; E's taxable year is the calendar year; and E reports on E's Federal income tax return for each year that the equity split-dollar life insurance arrangement is in effect the amount of income required to be reported under paragraph (d) of this section. The examples are as follows:

Example 1. (i) *Facts.* In year 1, R and E enter into the equity split-dollar life insurance arrangement. Under the arrangement R pays all of the premiums on the life insurance contract until the termination of the arrangement or E's death. The arrangement also provides that upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums paid or the policy cash value of the contract and E is entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R upon termination of the arrangement or E's death. To fund the arrangement, R purchases a life insurance contract with constant death benefit protection equal to $1,500,000. As of December 31 of year 1, the policy cash value equals $55,000 and R has paid $60,000 of premiums on the life insurance contract. As of December 31 of year 2, the policy cash value equals $140,000 and R has paid aggregate premiums of $120,000 on the life insurance contract. As of December 31 of year 3, the policy cash value equals $240,000 and R has paid $180,000 of premiums on the life insurance contract.

(ii) *Analysis.* Under the terms of the equity split-dollar life insurance arrangement, E has the right for year 1 and all subsequent years to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(*1*) and (*2*) of this section provided to E under the arrangement.

(iii) *Results for year 1.* For year 1, E is provided, under paragraph (d)(3)(ii)(A)(*2*) of this section, $0 of policy cash value (excess of $55,000 policy cash value determined as of December 31 of year 1 over $55,000 payable to R). For year 1, E is also provided, under paragraph (d)(3)(ii)(A)(*1*) of this section, current life insurance protection of $1,445,000 ($1,500,000 minus $55,000 payable to R). Thus, E includes in gross income for year 1 the cost of $1,445,000 of current life insurance protection.

(iv) *Results for year 2.* For year 2, E is provided, under paragraph (d)(3)(ii)(A)(*2*) of this section, $20,000 of policy cash value ($140,000 policy cash value determined as of December 31 of year 2 minus $120,000 payable to R). For year 2, E is also provided, under paragraph (d)(3)(ii)(A)(*1*) of this section, current life insurance protection of $1,360,000 ($1,500,000 minus the sum of $120,000 payable to R and the aggregate of $20,000 of policy cash value that E actually includes in income on E's year 1 and year 2 income tax returns). Thus, E includes in gross income for year 2 the sum of $20,000 of policy cash value and the cost of $1,360,000 of current life insurance protection.

(v) *Results for year 3.* For year 3, E is provided, under paragraph (d)(3)(ii)(A)(*2*) of this section, $40,000 of policy cash value ($240,000 policy cash value determined as of December 31 of year 3 minus the sum of $180,000 payable to R and $20,000 of aggregate policy cash value that E actually included in gross income on E's year 1 and year 2 federal income tax returns). For year 3, E is also provided, under paragraph (d)(3)(ii)(A)(*1*) of this section, current life insurance protection of $1,260,000 ($1,500,000 minus the sum of $180,000 payable to R and $60,000 of aggregate policy cash value that E actually includes in gross income on E's year 1, year 2, and year 3 federal income tax returns). Thus, E includes in gross income for year 3 the sum of $40,000 of policy cash value and the cost of $1,260,000 of current life insurance protection.

Example 2. (i) *Facts.* The facts are the same as in *Example 1* except that E cannot directly or indirectly access any portion of the policy cash value, but the terms of the equity split-dollar life insurance arrangement or applicable state law provide that the policy cash value in excess of the amount payable to R upon termination of the arrangement or E's death is inaccessible to R's general creditors.

(ii) *Analysis.* Under the terms of the equity split-dollar life insurance arrangement or applicable state law, the portion of the policy cash value exceeding the amount payable to R is inaccessible to R's general creditors. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(*1*) and (*2*) of this section provided to E under the arrangement.

(iii) *Results for years 1, 2 and 3.* The results for this example are the same as the results in *Example 1.*

* * * * *

(j) * * *

(2) * * *

(iii) *Valuation of economic benefits.* Notwithstanding paragraph (j)(2)(ii) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in paragraph (d)(3) of this section may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with paragraph (d)(3)(ii) of this section.

* * * * *

Par. 3. Section 1.83–6, as proposed on July 9, 2002, at 67 FR 45428, is amended by adding paragraph (a)(5)(ii)(B)(*3*) to read as follows:

§ 1.83–6 Deduction by employer.

(a) * * *

(5) * * *

(ii) * * *

(B) * * *

(*3*) *Valuation of economic benefits.* Notwithstanding paragraph (a)(5)(ii)(B)(*2*) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in § 1.61–22(d)(3) may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with § 1.61–22(d)(3)(ii).

* * * * *

Par. 4. Section 1.301–1, as proposed on July 9, 2002, at 67 FR 45428, is amended by adding paragraph (q)(4)(ii)(C) to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(q) * * *

(4) * * *

(ii) * * *

(C) *Valuation of economic benefits.* Notwithstanding paragraph (q)(4)(ii)(B) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in § 1.61–22(d)(3) may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with § 1.61–22(d)(3)(ii).

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–11568 Filed 5–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership.

DATES: The public hearing originally scheduled for Tuesday, May 20, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, January 22, 2003, (68 FR 2930), announced that a public hearing was scheduled for Tuesday, May 20, 2003, at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 704(b), 721, and 761of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, April 29, 2003. Outlines of oral comments were due on Tuesday, April 29, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, May 6, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, May 20, 2003, is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–11592 Filed 5–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7 and 13

[Notice No. 7; Ref: T.D. ATF–483, ATF Notices No. 954 and No. 964]

RIN 1513–AA46 (Formerly 1512–AC87)

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R–288P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: In response to an industry request, TTB reopens the comment period for ATF Notice No. 954, a notice of proposed rulemaking published in the **Federal Register** on October 8, 2002.

DATES: Written comments must be received on or before June 23, 2003.

ADDRESSES: You may view copies of the temporary and proposed regulations, the notice of proposed rulemaking, the request for extension, and any comments received on the notice by appointment at the ATF Reference Library, Public and Governmental Affairs, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, or online under Notice No. 954 at *http://www.ttb.gov/alcohol/rules/index.htm.*

You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 954);
- 202–927–8525 (Facsimile);
- *nprm@ttb.treas.gov* (E-mail);
- *http://www.ttb.gov/alcohol/rules/index.htm* (Online—A comment form is available with Notice 954.)

FOR FURTHER INFORMATION CONTACT: James VanVliet, Alcohol and Tobacco Tax and Trade Bureau, Alcohol Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8140; e-mail *James.Vanvliet@ttb.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 8, 2002, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a temporary rule (T.D. ATF–483, 67 FR 62856) to amend the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National

Organic Program (NOP) rules, which took effect October 21, 2002. The temporary rule confirmed that any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by USDA and the applicable rules administered by ATF.

At the same time, ATF published a notice of proposed rulemaking (Notice No. 954, 67 FR 62860) to solicit comments on the temporary rule. The comment period for Notice No. 954 was scheduled to close on December 9, 2002.

Before the close of the comment period, ATF received a request from the Wine Institute to extend the comment period for 90 days. The Wine Institute stated that it requested the extension in order to provide ATF with thoroughly researched comments that represented a full discussion among its members. In consideration of that request, on December 27, 2002, ATF published Notice No. 964 (67 FR 79011) to reopen the comment period until March 27, 2003.

Effective January 24, 2003, the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002), divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in the Department of Justice, and the Tax and Trade Bureau (TTB) in the Department of the Treasury. Under the Homeland Security Act of 2002, the Administrator TTB is authorized to administer and enforce Chapters 51 (relating to distilled spirits, wine and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of the Internal Revenue Code of 1986 (IRC), as amended, and IRC sections 4181 and 4182 (relating to the excise tax on firearms and ammunition). TTB also administers and enforces the Federal Alcohol Administration Act (FAA Act) and Webb-Kenyon Act in title 27, United States Code. Proceedings pending at the time the Homeland Security Act of 2002 was enacted, including notices of proposed rulemaking, are continued within the jurisdiction of the respective agencies under section 1512 of the Act. Therefore, TTB is continuing with the rulemaking on organic labels begun by ATF.

Before the March 27, 2003 due date for comments, TTB received a request from the Wine Institute for an additional 45-day extension of the comment period. The Wine Institute stated that it would like additional time to work with USDA representatives on labeling issues as they apply to wine. Since we have a temporary rule in place, we believe that an additional 45-day extension of the comment period is justified.

Additional Information on the Sulfite Statement in Wine

In early comments, several wine producers expressed concern that they would be required to list sulfites twice on their labels if they made wine from organic grapes, since sulfite statements are required under the FAA Act regulations and full ingredient listings are required by the USDA NOP rules. Commenters stated that they would be required to list any sulfiting agent as an ingredient under the NOP rules, and still give the sulfite warning required by 4.32(e). TTB's Advertising, Labeling and Formulation Division (ALFD) takes a different approach. ALFD approves labels that include the sulfite statement or identify the specific sulfiting agent in the ingredient listing, provided that the sulfite statement appears more conspicuous than its surrounding text and in a format allowed under the regulations. An example of this presentation appears in the sample label for wine made from 70% or more organic ingredients posted on the TTB Web site (*http://www.ttb.gov/alcohol/alfd/wine.pdf*).

Drafting Information

Marjorie Ruhf of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

Authority and Issuance

This document is issued under the authority in 27 U.S.C. 205.

Signed: May 2, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–11609 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to revise the exemption rule for N05520–5, entitled ''Personnel Security Program Management Records System''. The revision includes deleting the (k)(1) exemption because it is redundant and claiming subsections (c)(3) and (e)(1) under the (k)(5) exemption. The principal purpose of the (k)(5) exemption is to protect the identity of a confidential source. The expansion is considered supportive, and in furtherance, of the overall purpose of the exemption.

EFFECTIVE DATE: Comments must be received on or before July 8, 2003, to be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule 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.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, 32 CFR part 701 is amended to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

1. The authority citation for 32 CFR part 701, subpart F continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, paragraph (n) is revised to read as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(n) *System identifier and name:*

(1) *N05520–5, Personnel Security Program Management Records System.*

(2) *Exemption:* (i) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

* * * * *

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11576 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 030421095–3095–01; I.D. 111902C]

RIN 0648–AQ61

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy requesting a Letter of Authorization (LOA) for the harassment of small numbers of pinnipeds incidental to missile launch operations from San Nicolas Island, CA (SNI). By this document, NMFS is proposing regulations to govern that take. In order to issue the LOA and issue final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the affected species and stocks of marine mammals, will be at the lowest level practicable, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application and the regulations.

DATES: Comments must be postmarked no later than June 23, 2003. Comments will not be accepted if submitted via e-mail or the Internet.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application and a list of references used in this document are available and may be obtained by writing to this address or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Under section 3(18)(A), The MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term ''Level A harassment'' means harassment described in subparagraph (A)(i).

(C) The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Summary of Request

On October 23, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS), under section 101(a)(5)(A) of the MMPA, requesting an authorization, effective from August 26, 2003 through August 25, 2008, for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) on SNI, one of the Channel Islands in the Southern California Bight. These regulations, if implemented, would allow NMFS to issue an annual LOA to NAWS, which would replace the process of issuance of annual Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA (see 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002). This action is being undertaken in part based upon recommendations made on May 23, 2001 and August 6, 2002 by the Marine Mammal Commission, under section 202(a)(4) of the MMPA. The current IHA expires on August 26, 2003.

According to the NAWS' application, these operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. NAWS anticipates an average of 40 launches annually of Vandal (or similar sized) vehicles from SNI's Alpha Launch Complex (ALC) and smaller supersonic and subsonic missiles and targets from either ALC or the Building 807 Launch Site (Building 807). Launches at this level would be an increase as the NAWCWD conducted a total of 19 launches (including one dual launch) of Vandal rockets (14 launches) and 5 other missiles and targets from SNI between August 15, 2001 and July 18, 2002 under an IHA.

The purpose of these launches is to support activities associated with operations on the NAWCD's Point Mugu Sea Range. The Sea Range is used by the U.S. and Allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of targets, to verify that they are suitable for use as operational targets. While SNI is under the land management responsibility of NAWS, planned missile and other target launches are conducted by the NAWCWD. A detailed description of the operations is contained in the NAWS application (NAWS, 2002) which is available upon request (see **ADDRESSES**).

Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, NAWS has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa^2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html*. Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, the Navy believes that A-weighting is better than unweighted pressure levels because the pinniped's highest in-air hearing sensitivity is at higher frequencies than that of humans. In this document, whenever possible sound levels have been provided with A-weighting.

Description of the Specified Activity

In general, launch vehicles are the Vandal and a variety of other supersonic and subsonic missiles and targets. Most other vehicles used would be similar in size and weight or slightly smaller and would have characteristics generally similar to the Vandal. However, NAWS also has requested a marine mammal take authorization for up to 3 launches annually for vehicles that may be larger than the Vandal, but would be under 50,000 lbs (23,000 kilograms (kg)) in weight.

Vandal Target Missiles

The Vandal (designated MQM–8G) target missile is a relatively large, air-breathing (ramjet) vehicle with no

explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 m (25.2 ft) in length with a mass at launch of 3,674 kg (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. At launch, the Vandal is accelerated for several seconds by a solid propellant rocket booster to a speed sufficient for the ram-jet engine to start. After several seconds of thrust, the booster is discarded, falls into the water of the Sea Range, and the Vandal continues along its flight path at supersonic speed under ramjet power.

The Vandal and most other targets are launched from the ALC on the west-central part of SNI, a land-based launch site. The ALC is 192 m (630 ft) above sea level and is approximately 2 kilometers (km)(1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from ALC may vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft). However, to date, most Vandal launches during NAWS first IHA monitoring program had low angles (8 degrees) crossing the SNI beaches at an altitude of about 1,300 ft (396 m)(Lawson, 2002). Four Vandals however, had high angle (42 degrees) profiles, crossing SNI beaches at an altitude of about 9,600 ft (2,926 ft)(Lawson, 2002).

Vandal launches produce strong noise levels. Sound measurements collected during two Vandal launches in 1997 and 1999 indicated received A-weighted SPLs ranged from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa2 -sec) at 945 m (3,100 ft) to 136 dB (re 20 μPa) (SEL of 131 dB re 20 micro-Pa^2 -sec) at 370 m (1,215 ft) (Burgess and Greene, 1998; Greene, 1999). The most intense sound exposure occurred during the first 0.4 to 4.1 seconds after launch (Greene, 1999; Greene and Malme, 2002). However, what is important for this action is not the noise level near the launch site but the noise level over the pinniped haulouts on the SNI beaches. This will be discussed later in this document.

Supersonic and Subsonic Targets and Other Missiles

The Navy also plans to launch other subsonic and supersonic vehicles to simulate various types of threat missiles and aircraft. These are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM–34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM–74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Additional types of small vehicles that may be launched include the Exocet and Tomahawk missiles, and the Rolling Airframe Missile (RAM).

All of these smaller targets are launched from either the ALC or from Building 807. Building 807 is approximately 10 m (30 ft) above sea level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller vehicles, launch trajectories from Building 807 may range from 6 to 45 degrees and cross over the nearest beach at altitudes from 15 to 190 m (50 to 625 ft).

Sound measurements were collected from the launch of a BQM–34S at the Point Mugu Naval Air Station (NAS) in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa2 -sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa2 -sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999). The measured Terrior Orion SPL ranged from 89 to 138 dB and the SEL from 93 to 138 dB, although the SPL/SEL of 138 dB appears to be anomalously high (Lawson, 2002). The SPL/SELs for the AGS launches ranged from 95 to 150 dB (93 to 137 dB SEL) and the RAM launch SPL was 126 dB (131 dB SEL). It should be noted that these measurements were all flat-weighted, meaning that A-weighted SPL/SELs values were several decibels lower.

General Launch Operations

Aircraft and helicopter flights between NAS on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal and other vehicle launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

Comments and Responses

On March 11, 2003 (68 FR 11527), NMFS published a notice of receipt of the Navy's application for a small take authorization and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and the Stop LFAS Worldwide Network (Stop LFAS). The Commission supports NMFS' intent to publish proposed small take regulations for the Navy's activities on SNI provided that the mitigation and monitoring activities described in the NAWS petition for regulations are incorporated into the proposal.

Comment 1: The Stop LFAS states that underwater marine impacts due to missile testing will not be known unless an environmental impact statement is prepared.

Response: In March, 2002, the NAWCWD prepared and released to the public a Final Environmental Impact Statement/Overseas Environmental Impact Statement on the NAWCPNS Point Mugu Sea Range activities (Final EIS). This Final EIS analyzed in detail the potential for impacts on marine mammals including the Eastern North Pacific gray whale. In addition, on August 9, 2001 (66 FR 41834), NMFS released an Environmental Assessment/Finding of No Significant Impact on the issuance of a small take authorization for Vandal and other rocket and missile launches at SNI in 2001. The potential for gray whales (or other cetaceans) to be taken by harassment, injury or mortality is virtually nonexistent for several reasons, including low numbers offshore of SNI (< 10 percent of population), seasonality (spring/autumn), transitory behavior (non-feeding) off SNI, infrequent and low number of missile launches, airborne noise levels less than levels that could potentially cause temporary threshold shift (TTS), and a narrow window (maximum of 13 degree radius from perpendicular from the launch vehicle) for sound penetration into the water (i.e., almost all sounds hitting the water surface are reflected). For information on calculating ''take'' levels and the potential for marine mammals to be taken by this activity, please refer to the Navy's Final EIS on this action.

Comment 2: The Stop LFAS noted that in 2001, the State of California's Coastal Commission (CCC) did not have the benefit of information which has since come about as a result of recent litigation regarding noise issues and the potential harm which noise may have on marine mammals. Therefore, there is a need for greater environmental scrutiny than may have been suspected by the CCC over two years ago.

Response: On February 14, 2001, the CCC concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing CCC staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act. Federal regulations implementing the Coastal Zone Management Act (CZMA; 15 CFR part 930.46(a)) instituted procedures for supplemental coordination if, among other reasons, there is significant new information relevant to the proposed activity and its effect on any coastal use or resource. NMFS is unaware of any significant new information that would warrant supplemental coordination, but NMFS has forwarded this document to the CCC for review.

Comment 3: The Stop LFAS asked ''whatever monitoring would there be to gauge underwater responses from submerged marine life? How do we know that panic and death would not be assured?''

Response: See response to comment 1. Essentially, most airborne noise will be reflected at the water surface, significantly limiting penetration into the water column. Also, since the airborne sounds are less than would cause TTS, and propagation of those sounds that penetrate the water surface would quickly reduce to insignificant levels, it is unlikely that any cetacean would be affected by launch noises. Therefore, underwater monitoring is not considered necessary. However, NMFS would welcome suggestions on how to establish a practical monitoring program given the infrequency of both launches, low density of offshore marine mammals and the need to ensure personnel safety during launches.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in NAWS (2002), Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). General information on harbor seals and other marine mammal species found in Central California waters can be found in Caretta *et al.* (2001, 2002), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/ sars.html.* Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the pinniped (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the pinniped; these can range from temporary alert responses to active avoidance reactions such as stampedes into the sea from terrestrial haulout sites;

(4) Upon repeated exposure, pinnipeds may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that the pinniped perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of pinnipeds to hear natural sounds at similar frequencies, including calls from conspecifics, and environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Sounds generated by the launches of Vandal and similar target missiles and smaller subsonic targets and missiles (BQM–34 or BQM–74 type), as they depart sites on SNI towards operational areas in the Point Mugu Sea Range, have the potential to result in the incidental harassment of seals and sea lions. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. However, the extremely rapid departure of the Vandal and other targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). In addition, because launches are conducted relatively infrequently, neither physiological stress nor hearing related injuries are likely for pinnipeds exposed to more than a single launch event.

Noise generated from aircraft and helicopter activities associated with the

launches may provide a potential secondary source of incidental harassment of seals and sea lions. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on monitoring studies conducted under the IHA for this activity on SNI in 2001 and 2002, and on other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*, 1993), anticipated impacts can be predicted. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms, or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM–34 targets from NAS have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches.

Given the variability in pinniped response to acoustic disturbance, as supported by recent IHA monitoring (Lawson *et al.*, 2002), the Navy (NAWS, 2002) conservatively assumes that biologically significant disturbance (i.e., Level B harassment) will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals and 90 dBA for Pacific harbor seals. A biologically significant disturbance has been defined by NMFS in several previous rulemakings (e.g., 66 FR 43442, August 17, 2001; 67 FR 46712, July 16, 2002) as a disturbance of a behavior pattern that has the potential to have an effect on the reproduction or survival of the animal or the species.

A conservative estimate of the SEL at which TTS (Level B harassment) may be elicited in harbor seals, California sea lions and northern elephant seals has been determined to be 145 dB (re 20 micro-Pa^2 -sec) and 165 dB (re 20 micro-Pa^2 -sec), respectively (Lawson *et al.*, 1998). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by vehicles launched from SNI (described later in this document), suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100–dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria out to a distance of 4,263 m (13,986 ft) from the ALC. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100–dBA contour for Vandal launches. For BQM–34 launches from ALC, the Navy assumes that the 100 dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM–34, the 100 dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM–74 and Exocet missiles, the Navy predicts that the 100 dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100 dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Some animals may flee to the water. Since recorded observations of the responses of pinnipeds to Vandal launches along with post-launch surveys at the SNI haulouts have not shown injury, mortality, or extended biological disturbance, the Navy anticipates that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Since the launches are relatively infrequent, and of brief duration, it is unlikely that the pinnipeds near the launch site will become habituated to launch sounds. Pinnipeds that haul out on beaches at the western end of SNI for extended periods, or that return to haul-out sites regularly over the course of the year, may be exposed to sounds of more than a single launch, and may be ''harassed'' more than once each year. However, given the infrequency and brevity of these events, it is unlikely that much, if any, habituation to target missile launch activities has occurred.

In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. Therefore, the Navy assumes that these occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

Numbers of Marine Mammals Expected to Be Taken by Harassment

NAWS provisionally estimates that the following numbers of pinnipeds may be subject to Level B harassment annually: 1,403 northern elephant seals, 457 harbor seals, and 1,637 California sea lions. To determine the number of takings by harassment annually, one would need to multiply those numbers by the number of launches conducted annually. The animals affected may be the same animals or may be different animals, depending upon site fidelity of the species. Based on the results of recent monitoring of the haulouts, the estimated number of potential harassment takes would be significantly less than authorized under the two recent IHAs.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on SNI

Harbor seals, California sea lions, and northern elephant seals use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). Pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Mitigation

To avoid additional harassment to the pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within two hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will attempt to limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will attempt not to launch vehicles at low elevation on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will attempt to avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will attempt to limit launch activities during the night.

Monitoring

As part of its application, NAWS provided a proposed monitoring plan, similar to that adopted for the 2001/2002 and 2002/2003 IHAs (see 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy proposes to conduct the following monitoring during the first year under an LOA and regulations.

Land-Based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring would occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring would be via autonomous video cameras.

During the day of each missile launch, the observer would place three digital video cameras overlooking chosen haul out sites. Each camera would be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

Acoustical Measurements

During each launch, the Navy would obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data would be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. To the extent possible, acoustic recording locations would correspond with the sites where video monitoring is taking place. The collection of acoustic data would provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto compact discs (CDs) and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL (2002).

Reporting Requirements

An interim technical report is proposed to be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information would be available to be included for any launches during the 60–day period immediately preceding submission of the interim report to NMFS. In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations, this event will be reported to NMFS immediately.

The proposed 2003–04 launch monitoring activities will constitute the third year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. Several of the questions about effects of such launch activities on pinnipeds ashore are expected to be answered before the first LOA is issued based on the 2001–2003 monitoring under IHAs. Additional questions will be answered during the first year of monitoring under

an LOA in 2003–2004. Following submission in 2004 of the interim report on the first phase of monitoring under an LOA, NAWS believes that it would be appropriate for the Navy and NMFS to discuss the scope for any additional launch monitoring work on SNI subsequent to the first LOA issued under these regulations. In particular, some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2003–2004), and it may not be necessary to continue all aspects of the monitoring work after the first year.

In addition to annual LOA reports, NMFS proposes to require NAWS to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of the regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) on a similar action in 2001, and made a Finding of No Significant Impact (FONSI). Based on that EA/FONSI, the NAWCWD's March, 2002 Final Environmental Impact Statement to assess the effects of its ongoing and proposed operations in the Sea Range; and NAWS' October 2002 request for the subject proposed regulations, NMFS has preliminarily determined that this action will not have a significant effect on the human environment.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

CZMA Consistency

On February 14, 2001, by a unanimous vote, the California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary (CINMS). Also, all Navy Sea Range test and training activities are consistent with CINMS regulations (15 CFR 920.70).

Information Solicited

As this document is being published in conformance with NMFS regulations implementing the small take program (50 CFR 216.105), NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to authorize the taking. As required by 50 CFR 216.105, NMFS will consider this information in developing proposed regulations to authorize the taking. Prior to submitting comments, NMFS recommends reviewers of this document read the responses to comments made previously (see 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002; 68 FR 11527, March 11, 2003) for this action, as NMFS does not intend to address these issues further without the submission of additional scientific information.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services related to reporting the impact of the activity on marine mammals, some of whom may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 5, 2003.

Rebecca Lent,

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

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart N is added to read as follows:

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

Sec.

216.151 Specified activity, geographical region, and incidental take levels.
216.152 Effective dates.
216.153 Permissible methods of taking; mitigation.
216.154 Prohibitions.
216.155 Requirements for monitoring and reporting.
216.156 Letter of Authorization.
216.157 Renewal of the Letter of Authorization.

216.158 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§ 216.152 Effective dates.

Regulations in this subpart are effective from August 26, 2003, through August 25, 2008.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, in the course of conducting target missile launch activities within the area described in § 216.151(a) provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980–4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) Visual Land-Based Monitoring. (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for no less than 1 hour immediately following the launch of Vandal and similar types of target missiles.

(iii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to launch, during launch, and for no less than 1 hour after the launch of the BQM–34, BQM–74, Exocet, Tomahawk, RAM target and similar types of missiles.

(iv) Documentation, both via autonomous video camera and human observer, will consist of:

(A) numbers and sexes of each age class in focal subgroups;

(B) description and timing of launch activities or other disruptive event(s);

(C) movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) description of reactions;

(E) minimum distances between interacting and reacting pinnipeds;

(F) study location;

(G) local time;

(H) substratum type;

(I) substratum slope;

(J) weather condition;

(K) horizontal visibility; and

(L) tide state.

(2) Acoustic Monitoring. (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60–day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in § 216.157.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the number of marine mammals taken by the activity, specified in § 216.151(b), as a whole, will have no more than a negligible impact on the species or stocks of affected marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.156 for the activity identified in § 216.151(a) will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.155, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§ 216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) Renewal of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity continues to be small and that the number of marine mammals taken by the activity, specified in § 216.151(b), will have no more than a negligible impact on the species or stock of affected marine mammal(s).

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 03–11613 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030409081–3081–01; I.D. 032103B]

RIN 0648–AQ72

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Correction

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

ACTION: Proposed emergency rule; correction.

SUMMARY: This document corrects the preamble and regulatory text to a proposed emergency rule published on April 24, 2003, regarding a proposed action to ensure that the regulations governing the Northeast Multispecies fishery continue to be in compliance with the Settlement Agreement Among Certain Parties, which was ordered to be implemented as ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002. This correction remedies certain typographical, editorial, and format errors contained in the proposed emergency rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone 978–281–9347.

SUPPLEMENTARY INFORMATION:

Need for Correction

The proposed emergency rule published on April 24, 2003, which was the subject of FR Doc. 03–10163, contained information that may be confusing to the public. This document corrects those items as follows:

1. On page 20097, in the first column under **SUMMARY**, in the 29th line down, add ''13'' following the word ''Amendment''.

2. On page 20097, in the first column under **ADDRESSES**, remove the second paragraph in its entirety, and add in its place the following: ''Written comments regarding the proposed collection-of-information requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).''

3. On page 20097, in the first column under **ADDRESSES**, in the third paragraph, remove the first two lines, ''Written comments regarding the proposed collection-of-information''.

4. On page 20098, under Regulated Mesh Areas (RMAs), at the end of the paragraph remove ''≥'' and add quotation marks in its place (’’).

5. On page 20103, Table 3, seventh column heading, remove ''401–65'' and add in its place ''401–650''.

6. On page 20108, Table A, under § 648.82(m)(4)(iii), seventh column heading, remove ''401–65'' and add in its place ''401–650''.

Dated: May 1, 2003.

Rebecca Lent,

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

[FR Doc. 03–11614 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 90

Friday, May 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–035–3]

Importation of Phalaenopsis spp. From Taiwan in Growing Media; Availability of Environmental Assessment and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposal to allow orchids of the genus *Phalaenopsis* to be imported from Taiwan in approved growing media. The environmental assessment documents our review and analysis of environmental impacts associated with the proposed action. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 9, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–035–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–035–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 98–035–3'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of plants and plant parts into the United States to guard against the introduction of plant pests and noxious weeds into the United States. The regulations pertaining to the importation of plants and plant parts are set forth in the Code of Federal Regulations (CFR), title 7, chapter III, part 319.

On September 1, 1998, we published in the **Federal Register** (63 FR 46403–46406, Docket No. 98–035–1) a proposal to amend the regulations to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported from all areas of the world in an approved growing medium subject to specified growing, inspection, and certification requirements. We accepted comments on our proposal for a total of 90 days, ending December 1, 1998.[1]

In response to comments received on the proposed rule, APHIS narrowed the application of the rule to *Phalaenopsis* spp. from Taiwan only and entered into formal section 7 consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under the Endangered Species Act. On April 7, 2003, FWS concluded the section 7 consultation process by concurring with APHIS's determination that the importation of *Phalaenopsis* spp. from Taiwan in growing media will not adversely affect federally listed or proposed endangered or threatened species or their habitats.

Upon receiving concurrence from FWS, APHIS prepared an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

This notice announces the availability of the environmental assessment for public review and comment. The assessment, titled ''Proposed Rule for the Importation of Moth Orchids (*Phalaenopsis* spp.) in Growing Media From the Republic of China (Taiwan),'' and dated April 2003, may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html*. You may request paper copies of the environmental assessment from the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment is also available for review in our reading room (the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 6th day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11538 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–34–P

[1] The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on October 29, 1998 (63 FR 57932).

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, May 29, 2003, at the Whatcom County Parks and Recreation Department Conference Room, 3373 Mt. Baker Highway, Bellingham, WA. The meeting will begin at 9 a.m. and last until approximately 12 noon.

The purpose of the meeting will be to prioritize projects under consideration for FY2004 Title II funding under the Secure Rural Schools and Community Self-Determination Act.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advised Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: May 5, 2003.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 03–11535 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Glen Ellen Subwatershed Supplemental Watershed Plan and Environmental Assessment Number 1, Woodbury County, IA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Glen Ellen Subwatershed Supplemental Plan Number 1, Woodbury County, Iowa.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA, 50309–2180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant impacts on the environment. As a result of these findings, Leroy Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to prevent the loss of life from catastrophic dam failures and to maintain the gully stabilization and flood protection functions of three dams that were constructed in 1963.

The project actions include relocating three houses from the breach inundation area of Site (dam) 2–2, rehabilitating both this site and Site 3–1 to low hazard class, and rehabilitating Site 3–2 to high hazard class. This rehabilitation will provide a new 50 year life to the three sites to continue their original gully stabilization and flood prevention functions. Future residential and commercial development in the breach inundation areas below Sites 2–2 and 3–1 will be restricted by county zoning ordinance.

The Plan and Environmental Assessment has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and to interested parties. A limited number of copies of the plan and environmental assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be viewed by contacting Leroy Brown.

No administrative action will be taken until 30 days after the date of this publication in the **Federal Register.**

Finding of No Significant Impact for the Glen Ellen Subwatershed Supplemental Watershed Plan and Environmental Assessment Number 1 Woodbury County, IA

Introduction

The supplemental watershed plan and environmental assessment describes the recommended alternative and other alternatives to prevent the loss of life from catastrophic dam failures within the Glen Ellen Subwatershed of the Little Sioux River Flood Prevention Project. Rehabilitating Sites 2–2, 3–1, and 3–2 also provides continued flood protection and gull stabilization.

The rehabilitation of these three dams is necessary because four houses occupied by eleven people have been built in the breach inundation areas since the dams were constructed in 1963. Sites 2–2 and 3–2 have been reclassified as high hazard by NRCS because of the possibility of loss of life should the dams fail.

The dams were installed to control severe gully erosion and reduce flooding. The structures receive drainage from areas of 194 to 350 acres.

The Glen Ellen Subwatershed project was approved in 1963 under the authority of the Flood Control Act of 1944 (Pub. L. 534, 78th Congress, 2nd Session).

This rehabilitation action is being planned and will be implemented under the Watershed Protection and Flood Prevention Act Public Law 83–566 as amended by Public Law 106–472. It is being planned and is in compliance with all National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 as amended (NHPA) provisions. The policies and procedures of the Watershed Protection and Flood Prevention Act, Public Law 83–566 as amended (16 U.S.C. 1001 et seq.) are being utilized for the planning and implementation of this project.

Glen Ellen Watershed was a federally assisted action authorized and installed under Public Law 78–534, The Flood Control Act as part of the Little Sioux River Flood Prevention Project. The proposed rehabilitation actions are authorized in accordance with the original federal authorities as amended by the Small Watershed Rehabilitation Amendments of 2000.

An environmental assessment was undertaken by the Natural Resources Conservation Service (NRCS) in conjunction with the development of this rehabilitation plan. This assessment was undertaken in conjunction with local, state and federal agencies as well as interested organizations and individuals. Data developed during this

assessment and copies of the rehabilitation plan are available for public review at the following location: Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA 50309–2180.

An Environmental Impact Statement (EIS) was prepared for the Little Sioux Watershed Flood Prevention Project in 1976. The EIS discusses the effects of installing flood prevention and grade stabilization dams and land treatment practices.

Recommended Action

Rehabilitation of site 2–2 will consist of relocating three houses currently located in the breach inundation area and rehabilitating the dam to low hazard class criteria for a new 50-year life. Rehabilitating Site 2–2 includes replacing the inlet of the principal spillway, raising the crest of the principal spillway one foot, and excavating about 1.5 acre-feet of sediment from the existing pool. The three houses will be purchased and the three homeowners will be provided relocation assistance in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act (Public Law 91–646). The Woodbury County Zoning Administrator will carry out the relocation process.

Site 3–1, which is in series upstream of Site 3–2, will be rehabilitated for a new 50-year life using high hazard class hydrology but will remain a low hazard class dam. Site 3–1 will be rehabilitated by replacing the corrugated metal pipe with concrete pipe, raising the principal spillway elevation one foot, and raising the top of dam 6.2 feet. About 3.5 acre-feet of sediment will be removed from the existing permanent pool. The auxiliary spillway will be widened an additional 40 feet.

Site 3–2 will be rehabilitated to high hazard class criteria by replacing the corrugated metal pipe with concrete pipe, raising the principal spillway elevation one foot, and raising the top of dam 5.5 feet. The auxiliary spillway will be widened an additional 40 feet. The rehabilitation of this site eliminates the threat to loss of life at one house from catastrophic dam failure.

Future residential and commercial development in the breach inundation areas of Sites 2–2 and 3–1 will be restricted. Downstream of Site 2–2 the Woodbury County Board of Supervisors will take fee title to the three lots following relocation of the houses. The sponsors may also add deed restrictions prohibiting development or use county zoning ordinances for these three lots. The balance of the breach inundation area beyond the acquired properties will be restricted by using county zoning ordinances. Restrictions will be enacted prior to any rehabilitation construction. County zoning ordinances will prohibit development in the upstream areas of each site, as defined from principal spillway elevation to an elevation of six feet above designed top of dam.

Effects of the Recommended Actions

- Threats to loss of life from catastrophic breaches and storm events are eliminated at Sites 2-2 and 3-2. Eleven people in four houses are protected.
- There are no cultural resources in the area of potential effect. Construction discoveries will be handled in accordance with NRCS General Manual, Section 420, part 401.
- Gully erosion remains controlled at all 3 sites. Sheet and rill erosion as well as ephemeral cropland gully erosion remains controlled.
- Flood control benefits are maintained for another 50 years on 366 acres of agricultural land.
- Sediment delivered to all three sites is trapped and not delivered to Farmers Drainage Ditch and Little Sioux River system. A total of five acre-feet of sediment will be removed during construction from Sites 2-2 and 3-1. This sediment will be used to top dress Site 3-1's borrow area and the area where the three houses are removed. A plan to remove, utilize, and stabilize the sediment by controlling erosion and runoff will be developed with consultation with the Iowa Department of Natural Resources.
- There are wetlands associated with the three pools. Raising the spillway elevation will deepen water over some wetlands. This deeper water will not eliminate any wetlands but it will change their classification to another type. The expanded pools will create new wetlands.
- No Threatened and Endangered species are present at the existing sites.
- Raising the principal spillway elevations of the structures will inundate an additional 1.5 acres of low value grassland habitat. Increasing the fill heights of the structures will impact 1.6 acres of low value grassland habitat. The area downstream of Site 2-2, where the three houses are removed, will be seeded to a mixed prairie seeding increasing this habitat type by 3.3 acres in the subwatershed. The impacts to grassland habitat have been determined to be not significant, therefore formal mitigation will not be required.
- Continued flood protection on 110 acres maintains the land as prime farmland.
- Soil erosion, especially gully erosion, will be controlled in this portion of the Loess Hills which are a nationally recognized and unique natural resource.
- Construction will result in temporary generation of dust and emissions from internal combustion engines.
- Local fishing opportunity will be maintained.
- No other significant adverse environmental impacts will occur from installation of project features.
- There are no existing or anticipated public controversies associated with this proposed action.

Alternative Actions

Other alternative actions were considered in the planning process but were rejected. The plan is the most acceptable to local residents and local project sponsors. The plan eliminates threats to loss of life from catastrophic breaches and storm events. The original project purposes of gully control and flood prevention are maintained. The plan is not the National Economic Development (NED) plan. An exception to selecting the NED plan was granted by the Chief of the NRCS on April 21, 2003.

Consultation and Public participation

The Woodbury County SWCD and the Woodbury County Board of Supervisors discussed and conducted official actions to support the rehabilitation of Sites 2-2, 3-1, and 3-2 at their respective public meetings in 2001. The sponsors indicated a clear interest in rehabilitating these three Glen Ellen sites. Representatives of the sponsors, the Woodbury County Secondary Road Department, and NRCS met on February 12, 2001, to discuss the dam hazard class changes and possible alternatives to resolve the situation. The road department agreed to investigate relocating a segment to Glen Ellen Road as a component of raising the dam at Site 2-2. A follow up meeting was held on June 13, 2001.

Iowa NRCS conducted a state level informational meeting on the Watershed Rehabilitation Program on October 30, 2001. More than 60 letters of invitation were mailed to state level representatives of state and federal agencies, tribes, conservation groups, agricultural groups and others. Discussion of the Glen Ellen project was included at the meeting.

Two public meetings were held in Sergeant Bluff on November 29, 2001 to inform the public about the rehabilitation needs on Sites 2-2, 3-1, and 3-2 in addition to gaining public

input and support for the planning process. The three homeowners downstream of Site 2-2 voiced strong support for voluntary relocation of their houses.

Individual meetings were held with the three homeowners downstream, of Site 2-2 on April 22, 2002. The homeowners confirmed their continued strong support for relocation and each indicated their intent to participate in relocation. The Woodbury County SWCD voted on April 16, 2002 to support the relocation alternative. On April 23, 2002, the Woodbury County Board of Supervisors voted to support the project by providing extensive in-kind services from their Planning and Zoning Department, Secondary Roads Department, and County Conservation Board.

Twenty Indian tribal contacts and two local historical societies were notified of this intended action in accordance with 36 CFR part 800. They were consulted about their knowledge of historical properties in the project area. The only response received during the comment period was from the Prairie Band Potawatomi Nation who stated they were unaware of cultural resources related to the tribe in the project area.

The Glen Ellen Subwatershed Draft Supplemental Watershed Plan and Environmental Assessment Number 1 was sent to 40 public agencies and private groups interested in natural resource issues. Six letters of comment were received during the 45-day review period ending on February 24, 2003.

Changes were made to the plan in response to the Woodbury County Zoning Administrator's comment on the use of deed restrictions in addition to zoning to prevent redevelopment on three lots downstream from Site 2-2. Clarifications were made to reflect impacts on wetlands in response to comments received from the Army Corps of Engineers.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Glen Ellen Subwatershed Draft Supplemental Watershed Plan and Environmental Assessment Number 1 is not required.

Dated: April 30, 2003.

Dennis J. Pate,

Assistant State Conservationist—Technology.

[FR Doc. 03–11596 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 8, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 10, March 14, and March 21, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R.1434, 12340, and 13895) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative, Mail/Messenger and Warehouse Service, Federal Highway Administration, Eastern Federal Lands Highway Division, Sterling, Virginia

NPA: Anchor Mental Health Association (Anchor Services Workshop), Washington, DC

Contract Activity: Federal Highway Administration, Sterling, Virginia

Service Type/Location: Custodial Service, Naval Air Facility, Camp Springs, Maryland, Naval Research Laboratory, Washington, DC, Washington Navy Yard, Anacostia Annex (ANA), Washington, DC, Washington Navy Yard, Washington, DC

NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Contract Activity: Engineering Field Activity Chesapeake, Washington Navy Yard, DC

Service Type/Location: Janitorial/Custodial, USCG, Sandy Hook Detachment, Highlands, New Jersey

NPA: Monmouth Center for Vocational Rehabilitation, Eatontown, New Jersey

Contract Activity: USCG Activities New York, Staten Island, New York

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–11593 Filed 5–8–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 8, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services

listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, Bureau of Engraving and Printing, Landover Warehouse Facility, Landover, Maryland
NPA: Davis Memorial Goodwill Industries, Washington, DC
Contract Activity: Bureau of Engraving, Department of the Treasury, Washington, DC

Service Type/Location: Custodial Service, Franklin D. Roosevelt Library, Hyde Park, New York
NPA: Gateway Community Industries, Inc., Kingston, New York
Contract Activity: National Archives & Records Administration, College Park, Maryland

Service Type/Location: Custodial Service, Overton Corner Border Station, Champlain, New York
NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York
Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York

Service Type/Location: Custodial Service, U.S. Border Station, Old Champlain (Farm), Champlain, New York
NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York
Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York

Service Type/Location: Forms Distribution Service, Department of Health and Human Services, Agency for Healthcare, Research and Quality (AHRQ), Rockville, Maryland
NPA: Sheltered Occupational Center of Northern Virginia, Inc., Arlington, Virginia
Contract Activity: Agency for Healthcare Research and Quality, Rockville, Maryland

Service Type/Location: Janitorial/Custodial, Carl B. Stokes Federal Courthouse, Cleveland, Ohio
NPA: VGS, Inc., Cleveland, Ohio
Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois

Service Type/Location: Janitorial/Custodial, FAA, ATCT & FSDO, Gerald Ford International Airport, Grand Rapids, Michigan
NPA: Hope Network Services Corporation, Grand Rapids, Michigan
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Flint, Michigan
NPA: Michigan Community Services, Inc., Swartz Creek, Michigan
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center (Reading), Reading, Pennsylvania
NPA: Quality Employment Services and Training, Inc., Lebanon, Pennsylvania
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania

Service Type/Location: Janitorial/Grounds Maintenance, Bureau of Customs and Border Protection, McAllen Sector Quonset Hut, McAllen, Texas, Bureau of Customs and Border Protection, Traffic Checkpoint (Sarita)—McAllen Sector, Kingsville, Texas, Bureau of Customs and Border Protection, Traffic Checkpoint—McAllen Sector, Brownsville, Texas, Bureau of Customs and Border Protection, Traffic Checkpoint—McAllen Sector, Falfurrias, Texas, Bureau of Customs and Border Protection Traffic Checkpoint (Mercedes)—McAllen Sector, Weslaco, Texas, Bureau of Customs and Border Protection Station, Electronic/Technical, McAllen Sector, Kingsville, Texas, Bureau of Customs and Border Protection Station, McAllen Sector, Corpus Christi, Texas, Bureau of Customs and Border Protection Station (McAllen Sector), Falfurrias, Texas, Bureau of Customs and Border Protection Station (McAllen Sector), Harlingen, Texas, Bureau of Customs and Border Protection Station (McAllen Sector), Rio Grande City, Texas
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas
Contract Activity: Immigration and Naturalization Service, DOJ

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–11594 Filed 5–8–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders (M3) Survey.

Form Number(s): M–3(SD).

Agency Approval Number: 0607–0008.

Type of Request: Extension of a currently approved collection.

Burden: 14,000 hours.

Number of Respondents: 3,500.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Manufacturers' Shipments, Inventories, and Orders (M3) survey. This survey collects monthly data from domestic manufacturers on Form M–3 (SD), which is mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods. It is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector. It is designed to measure current industrial activity and to provide an indication of future production commitments.

This survey provides an essential part of the current economic indicators needed for assessing the evolving status of the economy and formulating economic policy. The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) has designated this survey as a principal federal economic indicator. The shipments and inventory data are essential inputs to the gross domestic product (GDP), while the orders data are direct inputs to the leading economic indicator series. The GDP and the economic indicator series would be incomplete without these data. The survey also provides valuable and timely domestic manufacturing data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and the academia.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 & 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 5, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–11495 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[I.D. 050603A]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Gulf of Mexico Shrimp Economic Data Collection.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 134.

Number of Respondents: 120.

Average Hours Per Response: 52 minutes.

Needs and Uses: NOAA proposes to collect information on fishing vessel expenses and earnings on a voluntary and continuous basis in the Gulf of Mexico offshore shrimp fishery.

The information will be used to conduct socioeconomic analyses that will improve fishery management in the fishery. Used in conjunction with catch and effort data already being collected in this fishery as part of its dealer reporting program, as well as Coast Guard and fishing permit data on vessel characteristics, this data will be used to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers.

In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations. In the program's first year, the program will only cover vessels that primarily port in the state of Texas. The data will be collected by interviews.

Affected Public: Business or other for-profit, individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by May 15, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–11615 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–817]

Administrative Review of Oil Country Tubular Goods from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall at (202) 482–1398, or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On September 25, 2002, the Department published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210. The period of review is August 1, 2001 through July 31, 2002. The preliminary results are currently due no later than May 5, 2003.

Extension of Time Limit for Preliminary Results of Review

The instant administrative review involves several complex issues that necessitate a greater amount of time, including discrepancies between the public version and proprietary version of U.S. Bureau of Customs and Border Protection import statistics. Therefore, it is not practicable to complete the preliminary results of this review within the original time limits mandated by section 751(a)(3)(A) of the Act. The Department is extending the time limit for completion of the preliminary results by 120 days, until not later than September 2, 2003.

This extension of the time limit is in accordance with sections 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: May 5, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–11617 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Health and Human Services, NIH; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–014. *Applicant:* Department of Health and Human Services, NIH, Research Triangle, NC 27709. *Instrument:* Electron Microscope, Model Tecnai G2 BioTWIN, BioTWIN Upgrade, and Accessories. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 68 FR 16472, April 4, 2003. *Order Date:* August 1, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–11619 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Vanderbilt University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–010. *Applicant:* Vanderbilt University, Nashville, TN 37203. *Instrument:* Scanning Near-field Optical Microscope, Model AlphaSNOM. *Manufacturer:* Wissenschaftliche Instrumente und Technologie GmbH, Germany. *Intended Use: See* notice at 68 FR 14197, March 24, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A standard invertible microscope platform with multiple connections for lasers and detection ports, (2) resolution of 80 nm, (3) capability of switching readily among a wide variety of operating modes with minimal sample rearrangements and (4) optimal flexibility for operation in a multi-user environment. A university research institute advised May 1, 2003, that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–11618 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils From France: Preliminary Results of Second Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of second countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from France for the period January 1, 2001, through December 31, 2001. We have preliminarily found that Usinor, the sole producer/exporter covered by this review, has received countervailable subsidies during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3986.

SUPPLEMENTARY INFORMATION:

Case History

The Department published the countervailing duty order on stainless steel sheet and strip in coils from France on August 6, 1999. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 64 FR 42923. The Department published the results of its first administrative review of the order on October 3, 2002. *See Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review,* 67 FR 62098 (''*First Review*'').

On August 6, 2002, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2001. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 67 FR 50856. We received a review request from Ugine SA (''Ugine'') on August 29, 2002. We published the initiation of this review on September 25, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews,* 67 FR 60210.

On October 18, 2002, we issued countervailing duty questionnaires to the Commission of the European Union (''EC''), the Government of France (''GOF''), and Usinor. We received responses to our questionnaires on December 13, 2002 (EC), and December 19, 2002 (GOF and Usinor). We issued a supplemental questionnaire to Usinor on February 24, 2003, and received Usinor's response on March 20, 2003. We received no comments on the responses from Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization (''petitioners'').

Scope of the Review

The products covered by this countervailing duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise covered by this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Also excluded from the scope of this order are:

Flapper Valve Steel: Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxid of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Suspension Foil: Suspension foil is a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm. over 685 mm length.

Certain Stainless Steel Foil for Automotive Catalytic Converters: This stainless steel strip in coils is a speciality foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent Magnet Iron-chromium-cobalt Alloy Stainless Strip: This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under priorietary trade names such as ''Arnokrome III.'' [1]

Certain Electrical Resistance Alloy Steel: This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain Martensitic Precipitation-hardenable Stainless Steel: This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Three Specialty Stainless Steels Typically Used in Certain Industrial Blades and Surgical and Medical Instruments: These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' [5] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Period of Review

The period of review (''POR'') for which we are measuring subsidies is January 1, 2001, through December 31, 2001.

Attribution of Subsidies

Usinor has filed its responses on behalf of its French affiliates involved in the manufacture, production or exportation of the subject merchandise. These affiliates are: Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterrannee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless (hereafter collectively referred to as ''Usinor''). Usinor holds a majority interest in all of these companies. Therefore, in accordance with 19 CFR 351.525(b)(6)(iii), we have preliminarily attributed subsidies received by these companies to the total sales by Usinor of French-produced merchandise.

Changes in ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC''), in *Delverde Sri* v. *United States,* 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied,* 2000 U.S. App. LEXIS 15215 (June 20, 2000) (''*Delverde III*''), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*.[6]

In accordance with the CAFC's finding, the Department developed a new change-in-ownership methodology, which was applied in a redetermination resulting from a remand order by the Court of International Trade (''CIT'') in *Allegheny-Ludlum Corp.* v. *United States,* No. 99–09–00566 (CIT August 15, 2000) (''*Allegheny I*''). *See final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al* v. *United States* (Dept. of Commerce, December 20, 2000) (''*Redetermination I*''). In *Allegheny I,* the CIT reviewed the final determination which gave rise to the countervailing duty order covered by this review. In *Redetermination I,* the Department examined the privatization of Usinor and found that the pre-privatization subsidies continued to benefit subject merchandise exported to the United States after Usinor's privatization. Upon review of *Redetermination I,* the CIT again remanded the issue to the Department. *See Allegheny Ludlum Corp.* v. *United States,* 182 F. Supp. 2d 1357, 1369 (CIT 2002) (''*Allegheny II*'').

On June 3, 2002, the Department issued its second *Results of Redetermination Pursuant to Court Remand: Allegheny Ludlum Corp., et al.* v. *United States* (''*Redetermination II*''), which the CIT sustained on September 24, 2002. *See Allegheny Ludlum Corp.* v. *United States,* No. 99–09–00566, 2002 Ct. Intl. Trade Lexis 114, Slip Op. 2002–114 (September 24, 2002) (''The *Allegheny Decision*''). The *Allegheny Decision* is currently on appeal at the CAFC. Usinor argues that the *Allegheny Decision* rejects as unlawful the change-in-ownership test applied by the Department in its *Redetermination I.* Pending a decision from the CAFC, however, we have continued to apply the same change-in-ownership methodology employed in *Redetermination I* in these preliminary results.

The first step under this methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

[6] *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37225 (July 9, 1993).

were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called ''Stable Shareholders.'' According to Usinor's 2000 annual report, the government-owned Electricite de France continues to own 3.6 percent of Usinor's shares.

In analyzing whether the producers of merchandise subject to review is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, had a continuity of assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same person as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to present-day Usinor and continue to benefit the subject merchandise during the POR.

1. Continuity of General Business Operations

Usinor has produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor beginning in 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively). *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 46. This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the original investigation shows the same three major products being produced by the same three subsidiaries. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 30774, 30776 (June 8, 1999) (''*SSSS from France''*).

In 1994 (prior to the privatization), flat products constituted 55 percent of consolidated sales, while stainless and specialty products constituted 20 and 18 percent respectively. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 47. In the years following privatization (1995–2000), flat carbon steels continued to account for between 49 and 58 percent of Usinor's consolidated net sales. *See Stainless Steel Sheet and Strip in Coils from France; Preliminary Results of Countervailing Duty Administrative Review,* 67 FR 31774, 31776 (May 10, 2002) (''*First Review Prelim*''). Sales of stainless and alloy, and specialty steel accounted for between 23 and 25 percent, and between 19 and 21 percent, respectively, during the post-privatization years, 1995 through 1997. Since then, sales of stainless, alloy, and specialty steel have been combined in Usinor's annual report and a separate category has been reported for ''processing and distribution.'' The combined sales of stainless, alloy and specialty steel ranged from 21 to 28 percent of Usinor's consolidated net sales over the period 1998–2000, while processing and distribution ranged from 6 to 18 percent over the same period. *See Id.* In 1999, Usinor divested itself of its specialty steels business.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (*e.g.,* by retaining the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994 and the construction industry was its second largest purchaser, accounting for approximately 26 percent of Usinor's sales in 1994. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 6, 17–18. In 1997 and 2000, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales in 1997 and 38 percent in 2000). The construction industry has continued as the second largest purchaser: 23 percent in 1997, and 15 percent in 2000. *See First Review Prelim,* 67 FR at 31777.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. A comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report demonstrates that steel production facilities have remained intact. The company has continued to focus on an ''all steel'' strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 21 and *First Review Prelim,* 67 FR at 31777. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change. *See First Review Prelim,* 67 FR at 31777.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same person that existed prior to the privatizaton and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, effective January 1, 1995 (''the Act''), require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 or 762 review; or (4) any other information placed on the record.

See section 776(b) of the Act; *see also*, 19 CFR 351.308(a), (b), and (c).

Section 782(d) of the Act requires the Department to inform a respondent if there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, is timely, is verifiable, can serve as a reliable basis for reaching our determination, and if the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) of the Act directs the Department not to decline to consider deficient submissions.

In the present review, the GOF did not provide information regarding the specificity of benefits under certain programs included under Investment/Operating Subsidies reported by Usinor. Instead, the GOF responded that ''in view of the multiplicity of programs, the noncountervailability of several of them, and the small amounts involved, the GOF has not undertaken to provide the requested documentation.'' *See* GOF Questionnaire Response, dated December 19, 2002, at 6–7. Similarly, the GOF was asked to provide this information in the investigation segment of this proceeding and elected not to do so. *See SSSS from France*, 64 FR at 30779–80. Thus, the GOF is aware of the specific information needed by the Department and apparently possesses responsive information, but has declined to provide it in response to our questionnaires.

Given these circumstances, the Department preliminarily has determined to apply facts available, pursuant to section 776(a)(2)(A) of the Act. Further, we preliminarily find that an adverse inference is warranted in applying facts available because, as noted above, the GOF elected not to provide information which it could provide and, hence, has not acted to the best of its ability. Verification, if one is conducted, is not the appropriate means for gathering this information.

Because the GOF did not provide information about these programs, including the distribution of benefits under the programs, the Department is unable to make specificity findings. Therefore, in applying adverse facts available, we preliminarily find that these programs are *de facto* specific. *See* section 771(5A)(D)(ii) of the Act. (Our analysis of the financial contribution and benefit under these programs is discussed below under ''Investment/Operating Subsidies.'')

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring benefits are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For stainless steel sheet and strip in coils, the IRS Tables prescribe an AUL of 15 years.

To rebut the presumption in favor of the IRS tables, the challenging party must demonstrate that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. *See* 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. *See* 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 26. We note, however, that the one allocable subsidy received by Usinor and attributed to Ugine, bonds issued by Fonds d'Intervention Sidérurgique (steel intervention fund) (''FIS''), has previously been allocated over a company-specific AUL of 14 years. The 14-year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (''*French Certain Steel*'') and was subsequently used to allocate this same subsidy in *SSSS from France* (64 FR at 30778) and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France,* 64 FR 73277, 73280 (December 29, 1999) (''*French Plate*''). Because the 14-year AUL was calculated using company-specific information and the information is more contemporaneous with the bestowal of the subsidy in question than the information underlying Usinor's 12-year calculation, we have continued to use the 14-year AUL to allocate the benefits of the FIS Bonds in this proceeding.

For non-recurring subsidies to Usinor, we applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsides approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsides is less than 0.5 percent of sales, the benefits are expensed in full in the year of receipt rather than allocated over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel* and *SSSS from France,* we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. *See French Certain Steel,* 58 FR 37304, 37305; *SSSS from France,* 64 FR 30774, 30778. No new information has been presented in this review to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this review, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this proceeding.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditorthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 341.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Service's: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the

International Monetary Fund. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on an average long-term interest rate developed in *SSSC from France* for 1989, and on Usinor's company's-specific borrowing rate for 1995.

I. Programs Preliminarily Found To Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the FIS was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS Bonds into equity as countervailable equity infusions. *See French Certain Steel,* 58 FR at 37307; *French Plate,* 64 FR at 73282; *SSSS from France,* 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France,* 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act. Finally, because Usinor was unequityworthy at the time of the infusions, we find that Usinor received benefit in the amount of the investments. *See* Section 771(5)(E)(i) of the Act.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we find that a countervailable benefit is being bestowed on the subject merchandise. Because the final year of the benefit stream for the 1986 infusion was 1999, *i.e.,* prior to this POR, we find that there is no countervailable benefit to the subject merchandise in this POR for the 1986 conversion. Thus, only the 1988 equity infusion continues to provide a benefit in the POR.

Pursuant to 19 CFR 351.507(c), we have treated the 1988 equity infusion as a non-recurring subsidy and allocated it over time according to 19 CFR 351.524(d). Because Usinor was uncreditworthy in 1988 (*see* section above on ''Subsidies Valuation Information: Equityworthiness and Creditworthiness''), we used an uncreditorworthy discount rate to allocate the benefit of the equity infusion.

In *French Plate,* we attributed separately to Usinor and GTS Industries S.A. their relative portions of the benefits from the equity infusion. *See French Plate,* 64 FR at 733282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate.* This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination as described in the ''Changes in Ownership'' section above.

Dividing the POR benefit attributed to Usinor by Usinor's total sales of French-produced merchandise during the POR, we preliminarily find Usinor's net subsidy rate for this program to be 1.06 percent *ad valorem.*

B. Investment/Operating Subsidies

During the period 1987 through the POR, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community (''ECSC''). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *SSSS from France* and *French Plate,* the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. *See SSSS from France,* 64 FR at 30779, 30788; *French Plate,* 64 FR at 73282. Additionally, in the *First Review,* the Department also found that funding provided under ECSC Article 55 was not countervailable. *See First Review,* 67 FR 62098, and accompanying ''Issues and Decision Memorandum,'' at Comment 5. Consistent with these previous findings, we have excluded these particular subsidies from the calculation of the benefit under this program.

Other than the exclusions noted above, we preliminarily find that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and a benefit, as described in section 771(5)(E)(i) of the Act. Also, as discussed above under ''Use of Facts Available,'' we preliminarily find that these investment and operating subsidies are specific within the meaning of section 771(5A)(D)(ii) of the Act. Therefore, consistent with *SSSS from France,* 64 FR at 30779, and *French Plate,* 64 FR at 73282, we preliminary find that these investment and operating subsidies are countervailable subsidies.

The investment and operating subsidies provided through 2000 have already been determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year. *See SSSS from France,* 64 FR at 30780; *French Plate,* 64 FR at 73283; and the *First Review,* 67 FR at 62098, and accompanying ''Issues and Decision Memorandum,'' at 3–4. Therefore, these benefits were expensed in the years of receipt, in accordance with 19 CFR 351.524(b)(2).

To calculate the benefit received during the POR, we divided the subsidies received by Usinor in the POR by Usinor's total sales of French-produced merchandise during the POR. Accordingly, we preliminarily find Usinor's net subsidy rate for this program to be 0.04 percent *ad valorem.*

C. Funding for Myosotis Project

In *SSSS from France,* we explained that Usinor received grants and reimbursable advances from the GOF to fund the Myosotis project under three agreements. We found that the amounts received by Usinor between 1989 and 1993 were properly expensed in the years of receipt and, hence, that there was no countervailable subsidy to the subject merchandise from these grants. We also found that, under the 1995 agreement, Usinor received a reimbursable advance from the GOF in support of the Myosotis project in 1997. *See SSSS from France,* 64 FR at 30780. In the prior review, Usinor reported that it received another advance in 1999 under the same 1995 agreement. The 1997 and 1999 advances were to be repaid in 1999 and 2001, respectively. *See First Review Prelim,* 67 FR at 31779.

In the instant review, Usinor reported that it recognized the entire 1999 advance as a grant during the POR. *See* Usinor 12/19/2002 Questionnaire Response at 34. The GOF reported that Usinor made a partial repayment on the balance outstanding from the 1997 advance. *See* GOF 12/19/2002 Questionnaire Response at 9.

As we established in the *First Review Prelim,* regardless of whether we treat the 1997 reimbursable advance as a

grant, which would have been expensed prior to the POR, or a zero-interest long-term loan, which would yield a benefit of zero during the POR (when rounded to the nearest hundredth), we continue to find that the 1997 reimbursable advance does not confer a countervailable benefit on subject merchandise during the POR. *See First Review Prelim,* 67 FR 31744, 31779.

With regard to the conversion of the 1999 reimbursable advance into a grant during the POR, this conversion constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit in the amount of the grant under 19 CFR 351.504. The Department determined in *SSSS from France* that assistance to Usinor for the Myosotis Project was specific. *See SSSS from France,* 64 FR at 30780. We have treated the benefit of the conversion as having occurred during the POR. We divided the total amount of the grant portion of the 1999 advance by Usinor's total sales of French-produced sales during the POR (*i.e.,* the year in which the 1999 reimbursable advance was converted to and approved as a grant). The result was less than 0.5 percent. Therefore, we have expensed the entire amount of the converted 1999 reimbursable advance (*i.e.,* the grant amount) during the POR. *See* 19 CFR 351.524(b)(2). To calculate the benefit, we divided the amount of the grant by Usinor's total sales of French-produced merchandise during the POR, consistent with the provisions of 19 CFR 351.504.

Therefore, we preliminarily find Usinor's net subsidy rate for the 2001 conversion of the 1999 reimbursable grant under this program to be 0.01 percent *ad valorem.*

II. Programs Preliminarily Found To Be Not Countervailable

A. Loans With Special Characteristics (PACS)

In *SSSS from France,* we determined that Usinor received a countervailable subsidy as a result of the GOF's 1986 conversions of PACS into common shares of Usinor. *See SSSS from France,* 64 FR at 30779. Because the final year of the benefit stream for this subsidy was 1999, *i.e.,* prior to this POR, we preliminarily find that there is no countervailable benefit to the subject merchandise in the POR.

B. Shareholders' Advances

In *SSSS from France,* we determined that Usinor received a countervailable subsidy as a result of shareholder advances made by the GOF in 1982–1986. *See SSSS from France,* 64 FR at 30779. Because the final year of the benefit streams for these advances was 1999, *i.e.,* prior to this POR, we preliminarily find that there is no countervailable benefit to the subject merchandise in the POR.

C. Electric Arc Furnace

In *SSSS from France,* we explained that the GOF had agreed to provide Usinor with reimbursable advances to support the company's efforts to increase the efficiency of the melting process, the first stage in steel production. *See SSSS from France,* 64 FR at 30780. Because the first disbursements were not to be made until 1998, *i.e.,* after the POI in *SSSS from France,* the Department found no benefit during the POI. *See SSSS from France,* 64 FR at 30780. In *French Plate,* the Department also found no benefit during the POI (1998), because the reimbursable advance was treated as a contingent liability loan and no payment would be due on a comparable commercial loan until 1999. *See French Plate,* 64 FR at 73284.

In the present review, Usinor reported that it received reimbursable advances under this program in 1998 and 1999, and that the program was phased out in 1999 and 2000. *See* Usinor 12/19/2002 Questionnaire Response at 35–36. These advances were approved in 1995, with repayments in 2002 and 2005, respectively. Usinor further reported that no new advances were received during the POR. *See* Usinor 12/19/2002 Questionnaire Response at 36.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, if these reimbursable advances were treated as grants, they would be expensed prior to the POR. *See* 19 CFR 351.505(d)(2) and 351.524(b)(2). Alternatively, we calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. *See* 19 CFR 351.505(d)(1). The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily find that they do not confer a countervailable benefit on the subject merchandise during the POR.

D. Conditional Advances

In *SSSS from France*, we explained that Usinor received a conditional advance from the GOF in connection with a project aimed at developing a new type of steel used in the production of catalytic converters. *See SSSS from France,* 64 FR at 30780. Payments were received by Usinor in 1992 and 1995. Repayment of the conditional advance was contingent upon sales of the product resulting from the project exceeding a set amount. We found that no repayment had been made and we treated the advance as a countervailable short-term, interest-free loan. In the present review, Usinor reported a balance outstanding in the POR and that it received no new assistance under this program. *See* Usinor 12/19/2002 Questionnaire Response at 32.

Assuming the conditional advance was approved in either 1991 or 1992, we divided the total amount received by Usinor's total sales of French-produced merchandise in each of those years. The result in both instances was less than 0.5 percent. Therefore, if the conditional advance were treated as a grant, it would have been expended prior to the POR. *See* 19 CFR 351.505(d). Alternatively, we have calculated the possible benefit to Usinor if the outstanding amount of the conditional advance were treated as a zero-interest long-term loan. *See* 19 CFR 351.505(d)(1). The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed the conditional advance further and preliminarily find that it does not confer a countervailable benefit on the subject merchandise during the POR.

III. Programs Preliminary Found To Be Not Used

Based on the information provided in the responses, we find that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. ESF Grants

In *SSSS from France* and *French Plate*, we found that certain Usinor companies had received grants under the European Social Fund (''ESF'') for worker training, and that the grants provided countervailable subsidies. Normally, the Department treats benefits from worker training programs to be recurring. *See* CFR 351.524(c)(1). However, we have found in several cases that ESF grants relate to specific, individual projects that require separate approval and, hence, should be treated as non-recurring grants. *See, e.g., SSSS from France*, 64 FR at 30781; *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998).

Because ESF grants are non-recurring subsidies and potentially allocable over time, we reviewed *SSSS from France* and *French Plate* regarding past disbursements to Usinor under this program. In *SSSS from France*, we determined that ESF grants received in 1995 and 1997 were less than 0.5 percent of Ugine's sales in those years. Hence, the benefits of those ESF grants were expensed in the years of receipt. *See SSSS from France,* 64 FR 30781. In *French Plate,* an ESF grant received in 1998 by CLI, a Usinor subsidiary, was also expensed in the year of receipt. In the *First Review*, we determined that the program was not used in 2000. *See First Review*, 67 FR at 62098, and the accompanying ''Isseus and Decision Memorandum,'' at ''Programs Determined To Be Not Used.'' Therefore, we find that ESF grants received by Usinor and its affiliates prior to the POR do not confer a countervailable benefit on the subject merchandise during the POR. Moreover, in the present review, Usinor reported that it did not receive any additional ESF grants during the POR. *See* 12/19/2002 Response at 36.

B. Export Financing under Natexis Banque Programs

C. DATAR Regional Development Grants (PATs)

D. DATAR 50 Percent Taxing Scheme

E. DATAR Tax Exemption for Industrial Expansion

F. DATAR Tax Credit for Companies Located in Special Investment Zone

G. DATAR Tax Credits for Research

H. GOF Guarantees

I. Long-term Loans from CFDI

J. Resider I and II Programs

K. Youthstart

L. ECSC Article 54 Loans

M. ECSC Article 56(2)(b) Redeployment/Readaptation Aid

N. ERDF Grants

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Usinor. For the period January 1, 2001, through December 31, 2001, we preliminarily find Usinor's net subsidy rate to be 1.11 percent. The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Bureau of Customs and Border Protection (''BCBP'') to collect cash deposits of estimated countervailing duties at the rate of 1.11 percent on the f.o.b. value of all shipments of the subject merchandise from Usinor and its affiliates that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For companies that were not named in our notice initiating this administrative review, we will instruct BCBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea,* 64 FR 42923 (August 6, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

While the countervailing duty deposit rate for Usinor and its affiliates may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise after August 6, 1999. Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunction, issued on December 22, 1999, is lifted.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. 19 CFR 351.309(d)(1). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. 19 CFR 351.310(c).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. 19 CFR 351.305(b).

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 03–11620 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032003A]

Endangered Species; File No. 1189

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

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that Dr. James P. Kirk, USAE Waterways Experiment Station, CEWES-ER-A, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199 has been issued a modification to scientific research Permit No.1189.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Gene Nitta, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 25, 2002, and on July 18, 2002, notices were published in the **Federal Register** [(67 FR 8526) and (67 FR 47351), respectively] that modifications of Permit No. 1189, issued April 22, 1999 (64 FR 23281), had been requested by the above-named individual. The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as

amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1189 authorizes the permit holder to capture 300 shortnose sturgeon annually by gill net or trot lines in the Ogeechee River, Georgia, then measure, tag, weigh, and release them. Twenty of these may be surgically implanted with radio/sonic tags and tracked. Accidental mortalities are not to exceed one shortnose sturgeon per year. The issuance of this modification extends the permit's expiration date to December 31, 2004 and adds trawling as a sampling method for the purpose of capturing shortnose sturgeon less than eight years of age.

Issuance of this modification, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 2, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11616 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of the Paperless ELVIS (Electronic Visa Information System) Requirement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

May 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection eliminating the paper visa requirement.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In an exchange of notes on March 6, 2003 and March 20, 2003, the Governments of the United States and the Republic of Korea agreed to the paperless Electronic Visa Information System (ELVIS). This arrangement provides for electronic transmission of visa information to the Bureau of Customs and Border Protection by the Government of the Republic of Korea for textiles and textile products exported to the United States which describes the shipment and includes the visa number assigned to the shipment. The transmission certifies the country of origin and authorizes the shipment to be charged against any applicable quota.

Effective on May 19, 2003, for entry into the United States, the paper visa requirement is eliminated for textiles and textile products, produced or manufactured in the Republic of Korea and exported on or after May 19, 2003. The Government of the Republic of Korea must issue an ELVIS transmission for each shipment of textiles and textile products exported on or after May 19, 2003. For exempt product shipments, the paper exempt certification remains unchanged and an ELVIS transmission is not required.

In the letter published below, the Chairman of CITA directs the Commissioner of the Bureau of Customs and Border Protection to eliminate the paper visa requirement and to require an ELVIS transmission for shipments of certain textiles and textile products, produced or manufactured in the Republic of Korea and exported to the United States on or after May 19, 2003. A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003). See also 61 FR 69082, published on December 31, 1996; and 56 FR 18574, published on April 23, 1991, as amended.

Goods integrated into GATT 1994 in Stages II and III by the United States will not require an ELVIS transmission (see Federal Register notices 63 FR 53881, published on October 7, 1998 and 66 FR 63225, published on December 5, 2001). An ELVIS transmission will continue to be required for non-integrated products.

Interested persons are advised to take all necessary steps to ensure that textile products that enter into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner, Bureau of Customs and Border Protection.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 5, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: this directive amends, but does not cancel, the directive issued to you on December 24, 1996, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea for which the Government of the Republic of Korea has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission, or exempt certification.

Effective on May 19, 2003, the paper visa will no longer be required for the entry of shipments of textiles and textile products, produced or manufactured in the Republic of Korea and exported to the United States on or after May 19, 2003. For exempt product shipments, the paper exempt certification will remain unchanged.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and pursuant to the Uruguay Round Agreement on Textiles and Clothing and the Electronic Visa Information System (ELVIS) Arrangement of March 6, 2003 and March 20, 2003 between the Government of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 19, 2003, entry into the Customs territory of the United States (i.e. the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670, and 800-899, including part categories and merged categories, produced or manufactured in the Republic of Korea and exported on or after May 19, 2003 for which the Republic of Korea has not issued an Electronic Visa Information System (ELVIS) transmission fully described below. Exempt product shipments do not require an ELVIS transmission. The list of part categories, merged categories and exempt products remains unchanged.

An ELVIS message must accompany each commercial shipment of the aforementioned textile products.

A. Each ELVIS transmission shall include the following information:

a. The visa number: The visa number shall be in the standard nine digit letter format beginning with one numeric digit for the last

digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (The code for Korea is KR), and a six digit numerical serial number identifying the shipment; e.g., 3KR123456.

b. The date of issuance: The date of issuance shall be the day, month and year on which the visa was issued.

c. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, Annotated or successor documents. Quantities must be quoted in whole numbers. Decimals or fractions will not be accepted.

d. The manufacturer ID code.

B. Entry of a shipment shall not be permitted:

a. if an ELVIS transmission has not been received for the shipment from the Republic of Korea;

b.if the ELVIS transmission for that shipment is missing any of the following information:

i. visa number

ii. category, part category, or merged category

iii.quantity

iv. unit of measure

v. date of issuance

vi. manufacturer ID number

c. if the ELVIS transmission for the shipment does not match the information supplied by the importer, or the Customs broker acting as an agent on behalf of the importer, with regard to any of the following:

i. visa number

ii. category, part category, or merged category

iii. unit of measure

d.If the quantity being entered is greater than the quantity transmitted.

e. If the visa number has previously been used, except in the case of a split shipment, or cancelled, except when entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the Republic of Korea is required before a shipment that has been denied entry for one the circumstances mentioned above will be released.

D. Visa waivers will only be accepted if the shipment qualifies for a one-time special purpose shipment that is not part of an ongoing commercial enterprise. A visa waiver may be issued by the Department of Commerce at the request of the Korea Embassy in Washington, DC. A visa waiver only waives the requirements to present an ELVIS transmission at entry, and does not waive any quota requirements.

E. In the event of a systems failure, shipments will not be released for twenty-four hours or 1 calendar day. If system failure exceeds twenty-four hours or 1 calendar day, for the remaining period of the system failure, the Bureau of Customs and Border Protection will release shipments on the basis of the visa data provided by the Republic of Korea. The Republic of Korea will retransmit all data that was affected by the systems failure when the system is functioning normally.

F. If a shipment from the Republic of Korea is allowed entry into the commerce of the United States with an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, the shipment will be charged to the applicable category quota.

Other Provisions

A. The date of export is the actual date the merchandise finally leaves the country of exportation. For merchandise exported by vessel, this is the day on which the carrier departs the last port in the country of origin.

B. Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $800 or less do not require an ELVIS transmission or an exempt certification for entry and shall not be charged to the agreement levels.

C. For exempt products shipments, the paper exempt certification remains unchanged and an ELVIS transmission is not required.

Goods integrated into GATT 1994 in Stages II and III by the United States will not require an ELVIS transmission (see Federal Register notices 63 FR 53881, published on October 7, 1998 and 66 FR 63225, published on December 5, 2001, respectively). An ELVIS transmission will continue to be required for non-integrated products.

The Committee for the Implementation of Textile Agreements has determined that this action fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–11528 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget has approved this information collection through September 30, 2003.

DATES: Consideration will be given to all comments received by June 9, 2003.

Title, Form Number and OMB Number: Application for Correction of Military Records Under the Provisions of Title 10, U.S. Code, Section 1552; DD Form 149; OMB Control Number 0704–0003.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 25,000.

Responses Per Respondent: 1.

Annual Responses: 25,000.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 12,500.

Needs and Uses: This information collection requirement is necessary for all Service personnel (current and former service members) to apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records under Title 10, United States Code Section 1552. The BCMRs of the Services are the highest administrative boards and appellate review authorities in the Services for the resolution of military disputes. The Service Secretaries, acting through the BCMRs, are empowered with broad powers and are duly bound to correct records if an error or injustice exists. The range of issues includes, but is not limited to awards, clemency petitions (of courts-martial sentences), disabilities, evaluation reports, home of record, memoranda of reprimands, promotions, retirements, separations, survivor benefit plans, and titling decisions by law enforcement authorities.

This information collection is needed to provide current and former service members with a method through which to request correction of a military record, and to provide the Services with the basic data needed to process the request.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11563 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 9, 2003.

Title, Form, and OMB Number: Medical Information Questionnaire; DSS FL 14a; OMB Number 0704–0206.

Type of Request: Reinstatement.

Number of Respondents: 11,700.

Responses Per Respondent: 1.

Annual Responses: 11,700.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 5,850.

Needs and Uses: The specific objective of a personnel security investigation is to elicit information concerning the loyalty, character, and reliability of the individual being investigated to ascertain his or her suitability for a position of trust. The DoD adjudicator may determine if it is clearly consistent with the interests of national security to grant the individual access to classified information. Adjudicative determinations are made in accordance with DoD 5200.2–R, ''DoD Personnel Security Program.'' This regulation specifies medical information that is to be obtained from records and physicians when there is an indication of a history of mental or nervous disorder, use or abuse of prescribed or illegal drugs, or abuse or excessive use of alcohol. The information provides the adjudicator with a complex picture of the individual to determine whether the individual should be granted access to classified information.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 2202–4302.

Dated: April 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11564 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 8, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Cleveland, DFAS–CL/PDS, ATTN: Addie El-Amin, 1240 E. 9th Street, Cleveland, CL 44199.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Addie El-Amin, 216–522–6096.

Title, Associated Form, and OMB Number: Physician Certificate for Child Annuitant, DD Form 2828, OMB License 0730–0011.

Needs and Uses: This form is required and must be on file to support an incapacitation occurring prior to age 18. The form provides the authority for the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/PD) to establish and pay a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity to the incapacitated individual.

Affected Public: Incapacitated child annuitants, and/or their legal guardians, custodians and legal representatives.

Annual Burden Hours: 240 hours.

Number of Respondents: 120.

Responses Per Respondent: 1.

Average Burden Per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/PD), in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS–CL/PD) every two years in order for the child to continue receiving annuity payments.

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11565 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Wednesday, May 14, 2003, at the Pentagon, Washington, DC from 0830 until 12 p.m. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Acquisition, Human Resources, Financial Management, and General Management related task groups will deliberate on their findings and

proposed recommendations related to tasks assigned earlier this year. Additional task groups may deliberate on proposed recommendations.

DATES: Wednesday, May 14, 2003, 8:30 a.m. to 12 p.m.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Room 2E314, Washington, DC 20301–1100, via E-mail at *DBB @osd.pentagon.mil,* or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Wednesday, May 7 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Friday, May 2 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11585 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Thursday, March 6, 2003 (68 FR 10704), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Enabling Joint Force Capabilities. The Task Force meeting originally scheduled May 20, 2003, has been rescheduled to May 12, 2003, in Washington, DC.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11584 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: June 11, 2003 from 8 a.m. to 5:35 p.m.

ADDRESSES: 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11583 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Office of the Inspector General, DoD, is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at (703) 604–9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–09

SYSTEM NAME:

Personnel Security Clearance/ Eligibility Data (February 22, 1993, 58 FR 10213).

CHANGES:

* * * * *

SYSTEM NAME:

Replace entry with 'Security Management and Access Files'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All civilian, contractor, and military personnel of the Office of the Inspector General of the Department of Defense (OIG DoD) who have been found eligible for employment/assignment, and who qualify and are eligible to occupy sensitive positions, perform sensitive duties, or for access to classified information.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records of each individual associated with personnel security functions. These records also include, but are not limited to, individual's name; Social Security Number; date and place of birth; current employment status; duty address; security training; an individual's qualification and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information; certificates of

clearance; security violations; identification badge records, courier authorizations, and access control records.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by individual's name, Social Security Number, and date and place of birth.'

SAFEGUARDS:

Delete entry and replace with 'Access to building is protected by guards requiring positive identification for admission. Access to computerized files is password protected, and is limited to authorized users having a need-to-know in the performance of their official duties.'

RETENTION AND DISPOSAL:

Delete entry and replace with Paper records are destroyed when superseded, obsolete or upon notification of death, or no later than 5 years after transfer or separation of the individual.

Electronic records are deleted after dissemination, revision or updating is complete, or within 180 days after the paper copy has been produced.''

* * * * *

CIG–09

SYSTEM NAME:

Security Management and Access Files.

SYSTEM LOCATION:

Office of Security, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, contractor, and military personnel of the Office of the Inspector General of the Department of Defense (OIG DoD) who have been found eligible for employment/assignment, and who qualify and are eligible to occupy sensitive positions, perform sensitive duties, or for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of each individual associated with personnel security functions. These records also include, but are not limited to, individual's name; Social Security Number; date and place of birth; current employment status; duty address; security training; an individual's qualification and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information; certificates of clearance; security violations; identification badge records, courier authorizations, and access control records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment, as amended; DoD 5200.2–R, DoD Personnel Security Program Regulation; and E.O. 9397 (SSN).

PURPOSE(S):

This record system is used by OIG Management officials to control the number of, and level of, sensitive positions; identify personnel assigned to these positions; and to determine whether personnel have been granted a clearance and the level of such clearance or access authorized.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information on the clearance/eligibility status of individuals may be provided to the appropriate clearance access officials of other agencies when necessary in the course of official business. Certifications of clearance are issued to officials of other agencies when necessary in the course of official business.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in folders; computer printouts and automated data base files.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number, and date and place of birth.

SAFEGUARDS:

Access to building is protected by guards requiring positive identification for admission. Access to computerized files is password protected, and is limited to authorized users having a need-to-know in the performance of their official duties.

RETENTION AND DISPOSAL:

Paper records are destroyed when superseded, obsolete or upon notification of death, or no later than 5 years after transfer or separation of the individual.

Electronic records are deleted after dissemination, revision or updating is complete, or within 180 days after the paper copy has been produced.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, Social Security Number, date and place of birth, current address and telephone numbers of the individual requester.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, Social Security Number, date and place of birth, current address and telephone numbers of the individual requester.

For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office identification card.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES

Certificates of clearance and/or record of personnel security investigations which are completed during a review of reports of investigations conducted by the Department of Defense and other Federal investigative organizations. Also, personnel security files are maintained on individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11566 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Joint Chiefs; Privacy Act of 1974; System of Records

AGENCY: Office of the Joint Chiefs, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Joint Chiefs is amending a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The changes will be effective on June 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Joint Chiefs notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

JS007MPD

SYSTEM NAME:

Joint Manpower Automation System (September 20, 2001, 66 FR 48431).

CHANGE:

* * * * *

PURPOSE(S):

Delete ''for the CINC'' from entry.

* * * * *

JS007MPD

SYSTEM NAME:

Joint Manpower Automation System.

SYSTEM LOCATION:

Primary system: the Joint Staff (J–1), The Pentagon, Room 1D957, Washington, DC 20318–1000.

Decentralized Segments: National Defense University, Directorate of Resource Management, ATTN: RMD–M, Ft McNair, Washington, DC 20319–6000.

Headquarters, U.S. Space Command, ATTN: J1, Peterson Air Force Base, CO 80914–5001.

Headquarters, U.S. Pacific Command, ATTN: J1, Camp H. M. Smith, HI 96861–5025.

HQ U.S. Strategic Command, ATTN: J11, Offutt Air Force Base, NE 68113.

Headquarters, U.S. European Command, ATTN: ECJ1, APO AE 09128–4209.

Headquarters, U.S. Southern Command, ATTN: SCJ1, APO AA 34003–0100.

Headquarters, U.S. Transportation Command, ATTN: J–1, Scott Air Force Base, IL 62225.

Headquarters, U.S. Central Command, ATTN: CCJ1, MacDill Air Force Base, FL 33608–7001; and

U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23511–2488.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to duty at each of the activities cited above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel information which has been extracted from official personnel files, including name; grade/rank; Social Security Number; salary; family member information; home address and telephone number; security clearance and date; date of rank; date of birth; Service; sex; race; marital status; reporting/departure date; current assignment data; education; experience; language proficiency; schooling; rating chain; and physical fitness data such as height, weight, fitness test results, body fat percentage, HIV test date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 5, Sections 151–155 and Chapter 6, Section 165; and E.O. 9397 (SSN).

PURPOSE(S):

To be used by officials of the personnel divisions of the decentralized segments noted above in performing all administrative functions as appropriate with respect to personnel assigned; for monitoring and processing requests for manpower; for performing organizational and manpower reviews; and for processing personnel actions requested by or required for the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Joint Staff compilation of records system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records exist on magnetic tape, diskette, and other machine-readable media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, and/or any combination of the data fields described in 'Categories of Records.'

SAFEGUARDS:

Access to this record system is restricted to authorized personnel in performance of official duties. Entry into the system is controlled by password.

RETENTION AND DISPOSAL:

Records are deleted when no longer needed for current business. This is in accordance with Item 5, General Records Schedule 20.

SYSTEM MANAGER(S) AND ADDRESS:

Joint Manpower Automation System Project Manager, Manpower Management Division, Manpower and Personnel Directorate, J–1, the Joint Staff, Washington, DC 20318–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Joint Manpower Automation System Functional Manager, Manpower Management Division, Manpower and Personnel Directorate, J–1, the Joint Staff, Washington, DC 20318–1000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Joint Manpower Automation System Project Manager, Manpower Management Division, Manpower and Personnel Directorate, J–1, the Joint Staff, Washington, DC 20318–1000.

Written requests should include full name, Social Security Number, address, and signature of the requester.

CONTESTING RECORD PROCEDURES:

The Joint Staff rules for accessing records and for contesting contents and appealing initial determinations are contained in OSD Administrative Instruction 81; Joint Administrative Instruction 2530.9A; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Source of information is the individual and the individual's Official Personnel File.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11570 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to transfer systems of records.

SUMMARY: Two Department of the Army Privacy Act systems of records are being transferred to the Department of Defense Education Activity (DoDEA), Office of the Secretary of Defense. The DoDEA is the responsible activity for maintaining records formerly maintained under A0352–3 CFSC, entitled 'Dependent Children School Program Files' and A0690–200 DAPE, entitled 'School Employee File'.

The notices will now be known as DODDS 26, 'DoD Domestic and Elementary School Program Files' and DODDS 27, 'DoD Domestic and Elementary School Employee File', respectively. Before being transferred, administrative changes have been made to the system name, system location, and authority categories within the notices.

DATES: The changes will be effective on June 9, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 26

SYSTEM NAME:

DoD Domestic and Elementary School Program Files.

SYSTEM LOCATION:

Department of Defense Domestic Elementary and Secondary Schools, 700 W. Park Drive, Peachtree City, GA 30269–1498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the Department of Defense Education Activity (DoDEA) dependents schools located at Fort Benning, GA; Fort Bragg, NC; Fort Campbell, KY; Fort McClellan, AL; Fort Rucker, AL; Fort Stewart, GA; and U.S. Military Academy, West Point, NY.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment/admission/registration/transfer applications; course preferences/curriculum; health records; attendance registers; academic achievements and report cards reflecting grades/credits earned; aptitude, intelligence quotient, and other test results; notes regarding student's special interests, hobbies, activities, sports; counseling documents; high school transcripts and certificates; and related supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; DoD Directive 1342.20, Department of Defense Education Activity (DODEA); and DoD Directive 1342.21, Department of Defense Section 6 Schools.

PURPOSE(S):

To record education provided for eligible dependent children of military and civilian personnel residing at Fort Benning, GA; Fort Bragg, NC; Fort Campbell, KY; Fort McClellan, AL; Fort Rucker, AL; Fort Stewart, GA; and U.S. Military Academy, West Point, NY.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Education in connection with Federal funding for public education; to federal and state educational agencies in connection with student's application for financial aid; to student's parents/legal guardians when DoDEA officials determine a bona fide need exits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

RETRIEVABILITY:

By student surname.

SAFEGUARDS:

Records are accessible only to authorized personnel having need for the information in the performance of their official duties.

RETENTION AND DISPOSAL:

Academic records for elementary school students are destroyed at the school attended after 5 years; those for secondary school students are destroyed after 65 years by the Washington National Records Center where such records are retired 5 years following student's graduation/withdrawal.

Individual student health records and tests/achievements documents are retained at the local school 1 year for elementary students; 2 years for secondary students, after which they are destroyed.

Teacher class registers of attendance and scholastic marks and averages are retained at the local school for 5 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the principal of the school attended.

Individual should provide current full name, name used at the time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the principal of the school attended.

Individual should provide current full name, name used at the time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

CONTESTING RECORDS PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, school teachers, principal, counselors, medical personnel, parents/guardians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DODDS 27

SYSTEM NAME:

DoD Domestic and Elementary School Employee File.

SYSTEM LOCATION:

Department of Defense Domestic Elementary and Secondary Schools, 700 W. Park Drive, Peachtree City, GA 30269–1498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Department of Defense Dependent Schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment applications; personnel action forms; copies of contracts or excerpts there from which describe services to be performed; time periods involved; amount of pay; location of employment; appointment affidavits; statements of service; group life and accident insurance election; survivor benefit elections; change of name request; educational transcripts; position assignment notices; promotion/reduction recommendations with approvals/declinations; supervisor evaluations; annual, sick and/or teacher leave records; miscellaneous correspondence, documents, and records concerning dependents; military and other Federal service, including service in other Federally funded dependents schools; letters of recommendations, commendations, reprimands, counseling sessions, and conference records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; DoD Directive 1342.20, Department of Defense Education Activity (DODEA); and DoD Directive 1342.21, Department of Defense Section 6 Schools.

PURPOSE(S):

To maintain record of the individual's Federal service; to document actions attributable to his/her employment and status; to administer pay and other employment policies and regulations as required by Pub. L. 81–874, the U.S. Commissioner of Education, and/or respective State Departments of Education.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to authorized representatives of the Secretary of the Department of Health and Human Services and/or the Department of Education to verify that pay and employment practices in Department of Defense Education Activity are comparable to those of the school districts in the State used for comparability purposes; verification, for salary and retirement purposes of Federal employment for personnel subsequently employed by public, Federal, or private school systems.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel having official need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained at the dependents schools until 30 days after termination of individual's service and subsequently retired to the National Personnel Records Center, St. Louis, MO 63118–4199.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

If inquiry is made 30 days after termination of employment, it should be made to the National Personnel Records Center.

Individual should provide current name, the name used during the period of Federal employment at the school concerned, if different, date of birth, names of schools, locations, and dates of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

If inquiry is made 30 days after termination of employment, it should be made to the National Personnel Records Center.

Individual should provide current name, the name used during the period of Federal employment at the school concerned, if different, date of birth, names of schools, locations, and dates of employment.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, notice of personal security clearance from Defense Investigative Service, appointment affidavits, copies of contracts or excerpts there from, personnel action, survivor benefit forms, education transcripts, position assignment notices, promotion/reduction recommendations with approvals/declinations, leave records,

records and reports, documents from previous employers and/or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11572 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General, DoD, is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 5, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at (703) 604–9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files (February 22, 1993, 58 FR 10213).

CHANGES:

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STORAGE:

Delete entry and replace with 'Paper records are stored in file folders and automated records are maintained on a computerized database.'

* * * * *

RETENTION AND DISPOSAL:

Hotline case files not referred are destroyed after 2 years.

Electronic copies created on electronic mail and word processing systems are deleted after a record keeping copy has been produced.

Automated and paper records are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The records are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.

* * * * *

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files.

SYSTEM LOCATION:

DoD Hotline Division, Office of the Assistant Inspector General for Inspections and Policy of the Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals filing hotline complaints; individuals alleged to have been involved in criminal or administrative misconduct, including, but not limited to, fraud, waste, or mismanagement; or individuals identified as having been adversely affected by matters being investigated by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from the referral of, and inquiry into, hotline complaints, such as the date of the complaint; the hotline control number; the name of the complainant; the actual allegations; referral documents to DoD components requesting investigation into DoD Hotline complaints; referral documents from DoD components transmitting the DoD Hotline Completion Report, which normally contains the name of the examining official(s) assigned to the case; background information regarding the investigation itself, such as the scope of the investigation, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the investigator's findings, conclusions, and recommendations; and the disposition of the case; and internal DoD Hotline forms documenting review and analysis of DoD Hotline Completion Reports received from DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense (IG, DoD) (32 CFR part 373); DoD Directive 7050.1, Defense Hotline Program (32 CFR part 98).

PURPOSE(S):

To record information related to official hotline investigations.

To compile statistical information to disseminate to other components within the Department of Defense engaged in the Hotline Program.

To provide prompt, responsive, and accurate information regarding the status of ongoing cases.

To provide a record of complaint disposition. Hotline complaints appearing to involve criminal wrongdoing will be referred to the Defense Criminal Investigative Service or other criminal investigative units of DoD components.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and automated records are maintained on a computerized database.

RETRIEVABILITY:

By Hotline case number, by subject matter, by the names of complainant(s), by subject(s) of the complaint, and by individual(s) alleged to have been adversely affected by matters being investigated by the OIG.

SAFEGUARDS:

Access is limited to DoD Hotline staff. Paper and automated records are stored in rooms protected by cipher lock. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Automated and paper records are retained within the DoD Hotline Program office for a period of five years following completion of final action. Thereafter, physical files are stored with the Federal Records Center, and automated data are archived within the DoD Hotline automated system for statistical purposes. Physical files and automated data are destroyed 15 years after the physical files are retired to the Federal Records Center.

RETENTION AND DISPOSAL:

Hotline case files not referred are destroyed after 2 years.

Electronic copies created on electronic mail and word processing systems are deleted after a record keeping copy has been produced.

Automated and paper records are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The records are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DoD Hotline Division, Office of the Assistant Inspector General for Inspections and Policy of the Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources, subjects, witnesses, all levels of Government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identiy of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 03–11579 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The Office of the Secretary is amending 4 systems of records notices in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), and deleting one.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: The changes will be effective on (insert date thirty days after publication in the **Federal Register**) unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

DTMA 05

SYSTEM NAME:

Grievance Records (May 15, 2000, 65 FR 30966).

REASON:

These records are now being maintained under the system of records notice DWHS P37, Grievance and Unfair Labor Practices Records.

Amendments

DTMA 01

SYSTEM NAME:

Health Benefits Authorization Files (May 15, 2000, 65 FR 30966).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 01

SYSTEM NAME:

Health Benefits Authorization Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek authorization or pre-authorization for medical and dental health care under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence to and from individuals; medical/dental statements; medical/dental histories; Health Care Advise Nurse records; Congressional inquiries; medical/dental treatment records; authorization and pre-authorization requests for care; case status sheets; memoranda for the record; follow-up reports justifying extended care; correspondence with contractors; and work-up sheets maintained by case workers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR part 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under TRICARE/CHAMPUS.

To determine eligibility of an individual, authorize payment, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for internal and external audits and reviews of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Automated indexes are maintained for six years. Hard copy records are closed out at the end of the calendar year in which finalized and held six additional years. Where hard copy records have been converted to electronic, microfilm, imaging, or optical formats, the hard copy is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefits Advisors, all branches of the Uniformed Services, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DTMA 02

SYSTEM NAME:

Medical/Dental Care and Claims Inquiry Files (May 15, 2000, 65 FR 30966).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 02

SYSTEM NAME:

Medical/Dental Care and Claims Inquiry Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek information concerning health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting inquiries received from private individuals for information on TRICARE/CHAMPUS and CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain and control records pertaining to requests for information concerning an individual's TRICARE/CHAMPUS eligibility status, the benefits provided under programs of TRICARE/CHAMPUS and CHAMPVA and the processing of individual TRICARE/CHAMPUS and CHAMPVA claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed. Where hard copy records have been converted to electronic, microfilm, imaging or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DTMA 03

SYSTEM NAME:

Legal Opinion Files (May 15, 2000, 65 FR 30966).

CHANGES:

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

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DTMA 03

SYSTEM NAME:

Legal Opinion Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted or corresponded with TRICARE Management Activity regarding any matter requiring legal clarification or resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries received from individuals, attorneys, fiscal administrators, hospital contractors, other government agencies, Health Care Advise Nurse records, and congressional offices. Files contain legal opinions, correspondence, memoranda for the record, and similar documents. Medical/dental treatment records, authorizations and pre-authorizations, care and claims inquiry documents, and medical/dental history files may be included in these records, as appropriated to document TRICARE legal determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000; Chapter 55, 10 U.S.C. 613, Chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

PURPOSE(S):

TRICARE Management Activity uses these records to address and resolve legal issues and for research, precedent, historical, and record purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or

criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by subject matter with cross-reference by individual name and/or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Records are permanent. Paper records are retired to the Denver Regional Records Center when ten years old or when no longer needed for current business. Records are transferred to the NARA when thirty years old. Electronic and other non-paper media records are maintained until no longer needed for current business and are then deleted or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals (TRICARE/CHAMPUS and CHAMPVA beneficiaries, sponsors, or others), attorneys, fiscal administrators, hospital contractors, managed care support contractors, providers of care, medical records, other government agencies (Federal, state, local and foreign), and Congressional offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DTMA 04

SYSTEM NAME:

Medical/Dental Claim History Files (May 15, 2000, 65 FR 30966).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 04

SYSTEM NAME:

Medical/Dental Claim History Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible beneficiaries and all individuals who seek health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains claims, billings for services, applications or approval forms, enrollment files, recoupment files, third-party liability files, fraud and abuse files, case management files, resource sharing files, utilization management/quality assurance files, payment files, medical/dental records, family history files, records of grievances with a medical/dental provider, appeals, hearings, or any other correspondence, memoranda, or reports which are acquired or utilized in the development and processing of TRICARE/CHAMPUS or CHAMPVA

claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports, which are acquired or utilized during the projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

PURPOSE(S):

TRICARE Management Activity and its contractors, DoD staff (including Military Treatment Facilities, clinics and Lead Agent Staff) use the information to control and process health care benefits available under TRICARE/CHAMPUS and CHAMPVA including the processing of medical/dental claims, the control and approval of medical/dental treatments, issuance of deductible certificates, and necessary interface with providers of health care. The system also supports audits of contractor-processed claims to determine payment and occurrence accuracy of the contractor's adjudication process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by sponsor's name; sponsor's Social Security Number; beneficiary's name; beneficiary's Social Security Number; provider's name; provider's number (Tax Identification Number or Social Security Number); internal control number; classification of medical diagnosis; procedure code; geographical location of care provided; and selected utilization limits.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through TRICARE Management Activity on-line data systems. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Paper records are closed out at the end of the calendar year in which finalized and held six additional years and then destroyed. Where hard copy records (except Claims History Files) have been converted to electronic, microfilm, imaging, or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion and then destroyed. Claims History Files maintained in electronic format are kept for ten years and are then destroyed or deleted.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide

some acceptable identification such as a driver's license or other form of picture identification. If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefit Advisors; other Components of the Department of Defense; all branches of the Uniformed Services; Congressional offices; providers of care; consultants; and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11582 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 AF CIC A

SYSTEM NAME:

Automated Orders Data System (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with 'F033 AF D'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'who perform annual, school, special, and Military Personnel Appropriation (MPA) tours' and add 'and other individuals that travel on Air Force travel orders'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace entry with 'Records relating to official travel of individuals, including travel orders, per diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individual's name, Social Security Number, rank/grade, office name, telephone, and related information.'

* * * * *

PURPOSE(S):

Replace entry with 'To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures and supports documentation requirements for official travel.'

* * * * *

F033 AF D

SYSTEM NAME:

Automated Orders Data System.

SYSTEM LOCATION:

Any location where temporary orders are published at all levels down to and including squadrons. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force civilian employees and military members who perform temporary duty travel, including all Air Force reserve personnel and other individuals that travel on Air Force travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to official travel of individuals, including travel orders, per diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individual's name, Social Security Number, rank/grade, office name, telephone, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Joint Federal Travel Regulation; Air Force Instruction 33–328, Administrative Orders; Air Force Instruction 65–103, Temporary Duty Orders; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures and supports documentation requirements for official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record

system in performance of their official duties and are properly screened for need-to-know. Passwords are established for computer system entrance.

RETENTION AND DISPOSAL:

Identification data is maintained until the individual is reassigned. Orders are maintained for 1 to 56 years after the year in which they are published.

SYSTEM MANAGER(S) AND ADDRESS:

Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name, Social Security Number, and office or organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name, Social Security Number, and office or organization.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from personnel records, automated system interfaces, individuals, and orders requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F033 AF CIC D

SYSTEM NAME:

Locator, Registration and Postal Directory Files (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Change to read 'F033 AF C'.

* * * * *

CATEGORIES OF INDIVIDUALS:

Replace 'unified and specified' with 'combatant'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete ''military service identification number''

* * * * *

F033 AF C

SYSTEM NAME:

Locator, Registration and Postal Directory Files.

SYSTEM LOCATION:

Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of combatant commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individuals name, grade, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

PURPOSE(S):

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used for directory service and forwarding individual personal mail received by Air Force postal activities, and for assignment of individual mailboxes. Files may be used locally to support official and unofficial programs that require minimal locator information, membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in card or form media in visible file binders/cabinets or card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are destroyed for one year after permanently assigned personnel depart, or three months after transient personnel depart. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on,

performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to or visit the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces; the individuals, or from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AETC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System (June 11, 1997, 62 FR 31793).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'ROTC Form 0–217, Change in'; 'ROTC Form 0–214, AFJROTC Instructor Contract Card, AFROTC'; 'or 0–218'. Replace 'comments on AFROTC' with 'comments on Officer Accession and Training School (AFOATS)'. Replace 'or 0–218 and' with 'and Departure/ Transfer Questionnaire'.

* * * * *

F036 AETC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System.

SYSTEM LOCATION:

Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Junior Reserve Officer Training Corps (AFJROTC) instructor applicants and instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for AFJROTC instructor duty, processing checklist, applicant evaluation forms, interview record, last 10 Airman Performance Reports or Officer Effectiveness Reports or summary of last 10 reports which includes period of supervision and overall evaluation, letter requesting Defense Central Index of Investigation (DCII) name check, photograph, Report of Separation from Active Duty, Retirement Order (if applicable), Commander's recommendation (for noncommissioned officers on active duty only), miscellaneous correspondence such as resume and letter of recommendation, copy of AF retirement physical and Physical Evaluation Board Findings if applicant is retired with 30 percent or more disability awarded by VA, letter requesting medical evaluation of AFJROTC instructor applicants for personnel retired with 30 percent or more disability, letter verifying dependents, instructor preference card, instructor intent letter, contract data cards, termination letters, certification certificates, AFJROTC Instructor Status, Air Force Junior ROTC Instructor Evaluation Report, letters pertaining to appeals of ratings and/or comments on Officer Accession and Training School (AFOATS) Form 98; and Departure/ Transfer Questionnaire.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 102, Junior Reserve Officers' Training Corps; Air Force Instruction 36–2010, Air Force Junior Reserve Officers' Training Corps; and E.O. 9397 (SSN).

PURPOSE(S):

Used to evaluate applicant qualifications for employment as AFJROTC instructors. Also used to determine if instructor is meeting Air Force standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer magnetic tape and computer printouts.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting and overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

Visitors must show armed forces identification card and some additional source of positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, the bureau of motor vehicles, a state or local government, witnesses and from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F065 AF SVA B

SYSTEM NAME:

Non-appropriated Fund (NAF) Insurance and Employee Benefit System File (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM NAME:

* * * * *

Change 'File' to 'Files'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace entry with 'Non-appropriated Fund (NAF) participants of the Air Force NAF Group Insurance and Retirement Programs as well as any NAF civilian who has filed a claim with Air Force NAF Workers' Compensation or Unemployment Compensation programs.'

* * * * *

RETENTION AND DISPOSAL:

Replace 'Life and Health' with 'Group'; after '20 years' delete 'upon' and add 'after'; after 'erasing' add 'degaussing'.

* * * * *

F065 AF SVA B

SYSTEM NAME:

Non-appropriated Fund (NAF) Insurance and Employee Benefit System Files.

SYSTEM LOCATION:

Air Force installations; NAF Instrumentalities (NAFIs), local Human Resources Offices and the Air Force Services Agency (HQ AFSVA), 10100 Reunion Place, Suite 502, San Antonio TX 78216–4138. Official mailing addresses are published in the appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NAF participants of the Air Force NAF Group Insurance and Retirement Programs as well as any NAF civilian who has filed a claim with Air Force NAF Workers' Compensation or Unemployment Compensation programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Group Life and Health Insurance Plan Files, Retirement and 401(k) Plan Files, Unemployment Compensation File, and Workers' Compensation Claim Files, all of which consist of, but are not limited to the following: applications and/or waivers of participation; notices of change of beneficiary; notices of termination of eligibility, disability and death; evidence of age and qualification for benefits; application for retirement; election to reinstate prior participation and survivor annuities; Social Security earnings data; employer certification of coverage; hospitalization and claims forms; report of accident or occupational illness; medical reports; payment forms; Unemployment Compensation claims; personal historical information, and other related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 5 U.S.C. 8171–73 Non-appropriated Fund Employees, Compensation for Work Injuries; Air Force Instruction 34–301, Air Force Non-appropriated Fund Personnel Management and Administration; Air Force Instruction 34–302, Non-appropriated Fund Employee Retirement Plan; Air Force Instruction 34–305 Non-appropriated Fund Employee Group Health Plan; Air Force Instruction 34–306 Non-appropriated Fund Employee Group Life and Accidental Death and Dismemberment Plan; Air Force Instruction 34–307 Non-appropriated Fund Employee Flexible Benefits Plan; Air Force Instruction 34–308 Non-appropriated Fund Employee Worker's Compensation Program; Air Force Instruction 34–309 Non-appropriated Fund Employee Unemployment Compensation; Air Force Instruction 34–315 Non-appropriated Fund Employees' 401(k) Savings Plan; and E.O. 9397 (SSN).

PURPOSE(S):

Provides information for the administration of the programs to determine eligibility and compensation entitlements. It is used in statistical and actuarial evaluations of the program; and to insure compliance with applicable laws, determine benefits and adjudicate pay claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information in the system may be disclosed to commercial concerns in actuarial evaluations and determinations of eligibility, and amounts of benefit payments due.

May be disclosed to Federal, state, and local governmental agencies as required by law, and to the Department of Labor to ensure compliance with statutory requirements, in furtherance of the Air Force Program involved, and to insure benefits for proper recipients.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties, who are properly screened and cleared for need-to-know. Records are stored in locked file containers, cabinets, vaults or rooms, and in computerized data storage devices controlled by computer system software.

RETENTION AND DISPOSAL:

At installation level, NAF Group Insurance Program and NAF Retirement Program records are retired to National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 62225–2001, upon employee's separation, death, or retirement. At Headquarters Air Force level, NAF Retirement and Unemployment Compensation Programs records are retained for a minimum of 20 years after an employee's withdrawal from the program. At Headquarters Air Force level, NAF Workers'

Compensation Program records are retained for 3 years after file is closed, retired to National Personnel Records Center for 15 additional years, and then destroyed. For all systems, eventual destruction is by burning, shredding, pulping, or macerating. Computer records are destroyed by erasing, degaussing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Benefits and Insurance Division, HQ Air Force Services Agency (HQ AFSVA/SVXBC), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to or visit the Benefits and Insurance Division, HQ Air Force Services Agency (HQ AFSVA/SVXBC), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138 or to the local Human Resources Office at installation of employment of individual making request.

Give name and Social Security Number (and date of accident or injury if related to worker's compensation claim).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Benefits and Insurance Division, Headquarters Air Force Services Agency (HQ AFSVA/SVXBC), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138 or to the local Human Resources Office at installation of employment of individual making request.

Give name and Social Security Number (and date of accident or injury if related to worker's compensation claim). Government identification card, or vehicle driver's license is required for positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individuals and their survivors and beneficiaries; Department of Labor; Social Security Administration; previous employers; medical institutions, and any individual in a position to verify relevant information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F065 AF SVA C

SYSTEM NAME:

Morale, Welfare, and Recreation (MWR) Participation/Membership/Training Records (June 11, 1997, 62 FR 31793).

CHANGES:

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SYSTEM NAME:

Replace entry with 'Services Activities Participation/Membership/Training Records.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace entry with 'Active duty and retired military members and their dependents; members of Reserve components, DOD appropriated and non-appropriated civilian employees and their dependents; and certain other categories of individuals identified as authorized patrons of Service activities in accordance with Air Force regulations.'

CATEGORIES OF RECORDS:

Replace 'MWR' with 'Services'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace entry with '10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 34–121, Other Recreation Membership Clubs Programs; Air Force Instruction 34–217, Air Force Aero Club Program; and Air Force Instruction 34–272, Air Force Club Program; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Replace entry with 'Maintained in paper and on computers and computer output products.'

SAFEGUARDS:

Replace entry with 'Records are accessed by person(s) responsible for servicing the record system in performance of official duties and by authorized personnel who are properly screened and cleared for a need to know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.'

* * * * *

RECORD SOURCE CATEGORIES:

Replace entry with 'Individual applications and/or activity reports of membership/participation in Services activities and offices of primary responsibility for Services activities.'

* * * * *

F065 AF SVA C

SYSTEM NAME:

Services Activities Participation/Membership/Training Records.

SYSTEM LOCATION:

Air Force Services Agency, 10100 Reunion Place Suite 402, San Antonio, TX 78216–4138; Air Force installations; major commands; and individual activities. Official mailing addresses are published in the appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military members and their dependents; members of Reserve components, DOD appropriated and non-appropriated civilian employees and their dependents; and certain other categories of individuals identified as authorized patrons of Services activities in accordance with Air Force regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Volunteer, membership, attendance, training, and participation/competition records and supporting data relative to Air Force Services activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 34–121, Other Recreation Membership Clubs Programs; Air Force Instruction 34–217, Air Force Aero Club Program; and Air Force Instruction 34–272, Air Force Club Program; and E.O. 9397 (SSN).

PURPOSE(S):

Determine membership/participation eligibility; maintain patron attendance; conduct contests; monitor training and currency of members; and serve as database for designing and conducting various recreation programs. Used by personnel responsible for conducting Air Force Services activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

May be provided to commercial or non-profit concerns conducting activities on behalf of, in support of or

in conjunction with the Air Force Services programs involved.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and on computers and computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of official duties and by authorized personnel and limited to those requiring access in the performance of their duties, and who are properly screened and cleared for a need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning, or surrender to member upon termination, as applicable. Computer records are destroyed by deleting files, erasing, degaussing, or overwriting using approved Air Force procedures and products.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Community Programs, Community Programs Division, HQ Air Force Services Agency (HQ AFSVA/SVP), 10100 Reunion Place, Suite 402, San Antonio, TX 78216–4138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Community Programs Division, Headquarters Air Force Services Agency (HQ AFSVA/SVPA), 10100 Reunion Place, Suite 402, San Antonio, TX 78216–4138 or Services activities at the appropriate Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Community Programs Division, Headquarters Air Force Services Agency (HQ AFSVA/SVPA), 10100 Reunion Place, Suite 402, San Antonio TX 78216–4138 or Services activities at the appropriate Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applications and/or activity reports of membership/participation in Services activities and offices of primary responsibility for Services activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11577 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending four systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC H

SYSTEM NAME:

Medical Opinions on Board for Correction of Military Records Cases (BCMR) (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Personnel Center, Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.'

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F036 AFPC H

SYSTEM NAME:

Medical Opinions on Board for Correction of Military Records Cases (BCMR).

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files are maintained on individuals making application to the Air Force Board for Correction of Military Records

on which a medical opinion has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains a copy of the medical advisory opinion rendered on Air Force Board for Correction of Military Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C. 79, Correction of Military Records; as implemented by Air Force Instruction 36–2603, Air Force Board for Correction of Military Records.

PURPOSE(S):

A historical reference, by name, to previous action taken regarding a specific BCMR application.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in filing cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in cabinets and locked rooms.

RETENTION AND DISPOSAL:

Retained in office files for one year or until no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AFPC G

SYSTEM NAME:

Medical Officer Personnel Utilization Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'Air Force Manpower and Personnel Center (AFMPC) Form 8' and 'Air Force Manpower and Personnel Center (AFMPC) Form 138'.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; as implemented by Air Force Instruction 36–2105, Officer Classification; Air Force Instruction 41–109, Special Pay for Health Professionals; Air Force Instruction 36–2610, Appointing Regular Air Force Officers and Obtaining Conditional Reserve Status; Air Force Instruction 36–2110, Assignments; Air Force Instruction 36–2504, Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force; Air Force Instruction 36–2107, Active Duty Service Commitments; and Air Force Instruction 36–2133, Specified Period of Time Contracts (SPTC).'

* * * * *

F036 AFPC G

SYSTEM NAME:

Medical Officer Personnel Utilization Records.

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, Deputy Director, Medical Service Officer Management Division, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force active duty medical service officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Utilization records containing: Career briefs; Print-outs; Letters from individuals; Letters from Utilization Branch to individuals Letters concerning medical service education and training; Copy of application for Indefinite Reserve Status; Copy of request to join spouse; Copy of Specified Period of Time Contract (SPTC) requests; Assignment/Actions Worksheet; Officer Reassignment; Memorandum of Official Contact; Officer Career Objective Statement; Personnel Action Request; Application for Appointment in the AF Reserve; Recall to Active Duty; Supplement to Application for Commission in the United States Air Force (U.S.) Medical Services; Assignment Notification of Medical Service Officer; Constructive Credit Computation; Personal Interview-USAF Nurse Application; Air Force Institute of Technology (AFIT) Education Plan; Messages; Department of Defense Notification of change in service members official records; Master Personnel Record Fiche; Training/Specialty Board Certification Records; Continuation Pay Contracts; Specialty Badge Award; Personnel Data Systems (PDS) transactions; Record of Office of Special Investigations (OSI) background checks; Resumes/special applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; as implemented by Air Force Instruction 36–2105, Officer Classification; Air Force Instruction 41–109, Special Pay for Health Professionals; Air Force Instruction 36–2610, Appointing Regular Air Force

Officers and Obtaining Conditional Reserve Status; Air Force Instruction 36–2110, Assignments; Air Force Instruction 36–2504, Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force; Air Force Instruction 36–2107, Active Duty Service Commitments; and Air Force Instruction 36–2133, Specified Period of Time Contracts (SPTC).

PURPOSE(S):

Verify current assignment; verify history of application for: Tour extension, tour curtailment, Specified Period of Time Contract, Indefinite Reserve Status, duty Air Force specialty code change, special duty application, formal school application, change of assignment reporting dates, join spouse application; Use AF Form 24 for obtaining date of birth and place of birth when processing assignment to academy or other highly sensitive area of assignment; to hold messages pertaining to assignment; to hold action notices and career briefs as a result of input from original office and any other office pertaining to an individual. This also includes career briefs and action notices from automatic actions (*i.e.*, available assignment); pay computation; grade computation; to provide background information to answer correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, etc.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files for six months after the individual terminates military service, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Director, Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Director, Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applications for appointment, letters written by individual or on individuals by others. Computer print-outs, forms completed by individuals, Personnel Data Systems (PDS) transactions, other information pertinent to assignments or career development of the officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AFPC P

SYSTEM NAME:

Separation Case Files (Officer and Airman) (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete ''Military''; before ''Randolph'' add ''550 C Street West,''; after ''Air Reserve Personnel Center'' add ''6760 East Irvington Place''.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace 'Air Force Regulation 36–2, Administrative Discharge Procedures (For Sub-standard Performance of Duty, Misconduct, Moral or Professional Dereliction, or in the Interest of National Security); 36–12, Administrative Separation of Commissioned Officers; and 39–10, Administrative Separation of Airmen' with 'Air Force Instruction 36–3206, Administrative Discharge Procedures For Commissioned Officers; 36–3207, Separating Commissioned Officers; and 36–3208, Administrative Separation of Airmen.'

* * * * *

F036 AFPC P

SYSTEM NAME:

Separation Case Files (Officer and Airman).

SYSTEM LOCATION:

Air Force Military Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–6001. National Personnel Records Center, Military Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5000. Air Reserve Personnel Center, 6760 East Irvington Place, Denver, CO 80280–5000. Duplicate copies may be retained temporarily at each level requiring review or action on the case.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and Airmen who have requested voluntary separation, who have been recommended or identified for involuntary separation under 10 U.S.C. 617(b) (including Reserve officers as a matter of Air Force Policy). Individuals who, under Pub. L. 95–202, Section 401, have requested review of service performed with the Army Air Force or U.S. Air Force to determine if such service was equivalent to active duty for purposes of laws administered by the Department of Veterans Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Member's application, letter from commander initiating separation action with endorsements, supporting documents, and record of final action take. If congressional inquiry involved, request for information and reply provided is also filed by those offices involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 59, Separations, 10 U.S.C. Chapter 36, Promotion, Separation and Involuntary Retirement of Officer on the Active-Duty List, Chapter 60, Separation of Regular Officers for Substandard Performance of

Duty or for Certain Other Reasons, and 38 U.S.C., Veteran's Benefits; as implemented by Air Force Instruction 36–3206, Administrative Discharge Procedures For Commissioned Officers; 36–3207, Separating Commissioned Officers; and 36–3208, Administrative Separation of Airmen.

PURPOSE(S):

The original document is retained as a permanent record of action taken. The duplicate copies are retained to provide a temporary record of actions being taken for responding to inquiries concerning the status of a particular case. Occasionally, a case file is retained as a precedence file for later reference in revising separation directives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual case files may be released to a governmental body or agency or health care professional society or organization if such record is needed to perform licensing or professional standards monitoring related to credentialed health care practitioners or licensed, non-credentialed health care personnel who are or were formerly members of the Armed Forces. Case files may also be released to medical institutions or organizations wherein such member has applied for or been granted authority or employment to provide health care services if such record is needed to assess the professional qualifications of such member.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name. At National Personnel Records Center. Cases and correspondence are filed with Master Personnel Records. Transitory copies are filed alphabetically by general subject categories, *i.e.*, involuntary officer separations, involuntary airman separations, etc.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. File cabinets and power files are secured during nonduty hours.

RETENTION AND DISPOSAL:

Master copies are retained permanently. Temporary files are disposed of within three years after final action is taken. Files are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Retirements and Separations Division (DPPR), Headquarters Air Force Personnel Center, 550 C Street West, Suite 11, Randolph Air Force Base, TX 78150–4713.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Retirements and Separations Division (DPPR), Headquarters Air Force Personnel Center, 550 C Street West, Suite 11, Randolph Air Force Base, TX 78150–4713.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Retirements and Separations Division (DPPR), Headquarters Air Force Personnel Center, 550 C Street West, Suite 11, Randolph Air Force Base, TX 78150–4713.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application, correspondence from unit commander's initiating separation action.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 AFJA C

SYSTEM NAME:

Judge Advocate Personnel Records (June 11, 1997, 62 FR 31793).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All Air Force active duty judge advocates and paralegals; Air Force civilian attorneys employed in classification series GS–905 and GS–1222 at Air Staff and AFLSA; active duty Air Force applicants for Funded Legal Education Program and Excess Leave Program, civilian employees and others with access to FLITE and other TJAG Department automated information systems.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace 'Military Personnel Center' with 1Air Force Personnel Center. After 'computer data' add 'official and personal locator information; officer performance and training'. Add at the end of the entry 'and Professional Development Information.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Records for military members are used by the Judge Advocate General, Deputy Judge Advocate General, and Professional Development Division (AF/JAX) to determine assignments.

Records for civilian members are used by the Executive Secretary and members of Ad Hoc and Air Force Civilian Attorney Qualifying Committees in evaluating and selecting civilian attorneys for appointment to Air Force position vacancies and promotions. Funded Legal Education and Excess Leave Program records are used by the Judge Advocate General, Deputy Judge Advocate General, Professional Development (AF/JAX) personnel, and selection board members in monitoring, evaluating and selecting the best qualified applicants for the programs.'

RETRIEVABILITY:

Add to the end of the entry 'Social Security Number, duty location, rank, job series, and other personnel information.'

* * * * *

RECORD SOURCE CATEGORIES:

After 'Information' add 'obtained directly from the individual or'

* * * * *

F051 AFJA C

SYSTEM NAME:

Judge Advocate Personnel Records.

SYSTEM LOCATION:

Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force

Pentagon, Washington, DC 20330–1420. Office and personnel directory information is maintained at Air Force Legal Information Services Directorate, Air Force Legal Services (AFLSA/JAS), 150 Chennault Circle, Maxwell Air Force Base, AL 36112–6148.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force active duty judge advocates and paralegals; Air Force civilian attorneys employed in classification series GS–905 and GS–1222 at Air Staff and AFLSA; active duty Air Force applicants for Funded Legal Education Program and Excess Leave Program, civilian employees and others with access to FLITE and other TJAG Department automated information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Educational background; certificate of admission to the bar; career management questionnaire; career objective statement; active duty and reassignment orders; correspondence relating to the individual; Air Force Personnel Center computer data; official and personal locator information; officer performance and training; classification/on-the-job training actions; Judge Advocate General Reserve Personnel Questionnaire; Headquarters USAF active duty and attachment orders; training reports; authorizations for inactive duty training; civilian personal qualifications statement; notification of personnel actions; statement of good standing before the bar; transcript of law school record; statement of availability for Air Force civilian attorney vacancies; actions by Ad Hoc Selection Committee and Air Force Civilian Attorney Qualifying Committee; Judge Advocate interview; letter of acceptance from an American Bar Association accredited law school; application and agreement; LSDAS report; transcript of all undergraduate and graduate education, letters of recommendation, and Professional Development Information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, Civil service; generally; 10 U.S.C. 261, Reserve Components named; 806, Judge advocates and legal officers; 2004, Detail of commissioned officers of the military departments as students at law schools; 8072, Judge Advocate General: Appointment and duties; 62 Stat. 1014; Air Force Instruction 51–802, Assignment to the Judge Advocate General's Department Reserve; Air Force Instruction 36–2110, Assignments; and E.O. 10577.

PURPOSE(S):

Records for military members are used by the Judge Advocate General, Deputy Judge Advocate General, and Professional Development Division (AF/JAX) to determine assignments.

Records for civilian members are used by the Executive Secretary and members of Ad Hoc and Air Force Civilian Attorney Qualifying Committees in evaluating and selecting civilian attorneys for appointment to Air Force position vacancies and promotions. Funded Legal Education and Excess Leave Program records are used by the Judge Advocate General, Deputy Judge Advocate General, Professional Development (AF/JAX) personnel, and selection board members in monitoring, evaluating and selecting the best qualified applicants for the programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number, duty location, rank, job series, and other personnel information.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Judge Advocate Officer Personnel records and Funded Legal Education and Excess Leave Program records are retained in office files for one year after the individual terminates military service, or until no longer needed for reference, then destroyed. Computer records are destroyed when the individual terminates military service. Other records: Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Chief, Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420.

Full name and Social Security Number should be furnished.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to or visit the Chief, Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420.

Visits may be made to HQ USAF/JAX, Pentagon, Washington, DC 20330–5000. Valid identification card, driver's license or equivalent must be presented.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained directly from the individual or obtained from previous employers, educational institutions, automated system interfaces, state or local governments, source documents, and from Air Reserve Personnel Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11580 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete and amend Systems of Records.

SUMMARY: The Department of the Army is deleting two systems of records notices from its inventory, and amending four systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The two Army systems of records known as A0352–3 CFSC, 'Dependent Children School Program Files' (February 22, 1993, 58 FR 10002) and A0690–200 DAPE, 'School Employee File' (February 22, 1993, 58 FR 10002) are now under the cognizance of the Department of Defense Education Activity (DoDEA), Office of the Secretary of Defense and are therefore being transferred. Their new system identifiers are DODDS 26, 'DoD Domestic and Elementary School Program Files' and DODDS 27, 'DoD Domestic and Elementary School Employee File'.

The Army is also amending several addresses in its Address Directory under the Major Commands and Unified Commands headings. The amendment replaces 'Commander in Chief' to 'Commander'.

DATES: This proposed action will be effective without further notice on June 9, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

A0352–3 CFSC

SYSTEM NAME:

Dependent Children School Program Files (February 22, 1993, 58 FR 10002).

Reason: These records are now under the cognizance of the Department of Defense Education Activity, Office of the Secretary of Defense, and will be maintained under the Privacy Act system of records notice DODDS 26, entitled 'DoD Domestic and Elementary School Program Files'.

A0690–200 DAPE

SYSTEM NAME:

School Employee File (February 22, 1993, 58 FR 10002).

Reason: These records are now under the cognizance of the Department of Defense Education Activity, Office of the Secretary of Defense, and will be maintained under the Privacy Act system of records notice DODDS 27, entitled 'DoD Domestic and Elementary School Employee File'.

Amendments

A0025–55SAIS

SYSTEM NAME:

Request for Information Files (August 3, 1993, 58 FR 41250).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0025–55 TAPC'.

SYSTEM NAME:

Delete entry and replace with 'Freedom of Information Act Program Files'.

* * * * *

STORAGE:

Replace entry with 'Paper records in file folders and electronic storage media.'

* * * * *

SAFEGUARDS:

Replace entry with 'All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.'

RETENTION AND DISPOSAL:

Replace entry with 'Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.'

* * * * *

A0025–55 TAPC

SYSTEM NAME:

Freedom of Information Act Program Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12958, National Classified Security Information, as amended. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12958, National Classified Security Information, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–55, The Department of the Army Freedom of Information Act Program; and E.O. 12958, National Classified Security Information, as amended.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to E.O. 12958, National Classified Security Information, as amended, including appeals from denials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/ Privacy Acts Office, 7798 Cissna Road, Springfield, VA 22153–3166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide enough information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0220–1 USSOCOM

SYSTEM NAME:

Military Personnel Data File, USSOCOM (February 22, 1993, 58 FR 10002).

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.'

* * * * *

A0220–1 USSOCOM

SYSTEM NAME:

Military Personnel Data File, USSOCOM.

SYSTEM LOCATION:

U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Marine Corps, and Air Force personnel assigned for duty with U.S. Special Operations Command (USSOCOM).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, Social Security Number, rank, pay grade, date of rank, branch of service, Army officer branch, basic active service date, basic pay entry date, date of birth, organization and division, primary and secondary military specialty, duty MOS/ AFSC, marital status, officer evaluation report/enlisted efficiency report date, reserve regular officer status, duty telephone number, home address and telephone number, spouse's name, date arrived at USSOCOM, projected loss date, expiration term of service, foreign service availability code, human personal reliability screening data, language proficiency, enlisted evaluation report weighted average, name of OER/EER rater, duty title, permanent grade, date of rank, rated category, highest professional military and civilian education, source of commission, mandatory retirement date (officers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a consolidated joint personnel file pertaining to Army, Navy,

Marine Corps, and Air Force personnel. Although each service has its own personnel records system, USSOCOM requires basic personnel data for Command Manning Rosters and similar management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The system is an on-line disc resident application with back-up maintained on magnetic tape.

RETRIEVABILITY:

Standard reports and ad hoc retrievals are generated via remote terminals using a data management system. Updates and record browsing may be accomplished in the interactive mode through keying by Social Security Number.

SAFEGUARDS:

All operators have passwords, which are required for access to the computer file. All output products bear Privacy Act labels.

RETENTION AND DISPOSAL:

Personnel data are deleted upon departure of the individual from USSOCOM.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Special Operations Command, ATTN: Director of Personnel (SOJ1–P), MacDill Air Force Base, FL 33608–6001.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this system should address written inquiries to Commanding General, U.S. Special Operations Command, ATTN: Director of Personnel (SOJ1–P), MacDill Air Force Base, FL 33608–6001.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing agency determinations are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official military personnel records of the individual upon his/her reporting to USSOCOM for duty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0340–21 TAPC

SYSTEM NAME:

Privacy Case Files (April 13, 2001, 66 FR 19150).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and on electronic storage media.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

Replace 'Fort Belvoir, VA 22153–3166' with 'Springfield, VA 22153–3166'.

* * * * *

A0340–21 TAPC

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, the Privacy Act of 1974, as amended; 10 U.S.C. 3013, Secretary of the Army; and Army Regulation 340–21, The Army Privacy Program.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official

duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requester are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, ATTN: Freedom of Information/Privacy Act Office, 7798 Cissna Road, Springfield, VA 22153–3166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Act Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Act Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from 'other' systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, the Department of the Army hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files (April 4, 2003, 16484).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Substance Abuse Program'.

* * * * *

A0600–85 DAPE

SYSTEM NAME:

Army Substance Abuse Program.

SYSTEM LOCATION:

Primary location: Army Substance Abuse Program (ASAP) rehabilitation/counseling facilities (*e.g.*, Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Secondary location: Army Center for Substance Abuse Program, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army, Army National Guard of the U.S., Army National Guard, U.S. Army Reserve, Army civilian employees, military and civilian employee family members and military retirees who are screened and/or enrolled in the Army Substance Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/Screening record—PIR (DA Form 4465–R); Patient Progress Report—PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document—Drug Testing (DD Form 2624), and similar or related documents.

Secondary location: Copies of Patient Intake/Screening record—PIR (DA Form 4465–R); Patient Progress Report—PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document—Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd–2; Federal Drug Free Workplace Act of 1988; Army Regulation 600–85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential

harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname, Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken there from and entered into computer records is transferred to the 'history' file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

Personnel Reliability Program (PRP) records are maintained no longer than 6 years after individual is separated from PRP, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

MAJOR COMMANDS

Commander, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09014–0010.

Commander, U.S. Army Forces Command, 1777 Hardee Avenue, SW., Fort McPherson, GA 30330–1062.

Commander, U.S. Army Corps of Engineers, 20 Massachusetts Avenue NW., Washington, DC 20314–1000.

Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Fort Belvoir, VA 22060–5506.

Commander, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6003.

Commander, U.S. Army Intelligence and Security Command, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

Commander, U.S. Army Military District of Washington, 103 Third Avenue, Fort McNair, DC 20319–5058.

Commander, U.S. Army South, P.O. Box 34000, Fort Buchanan, Puerto Rico 00934–5301.

Commander, U.S. Army Special Operations Command (Airborne), Fort Bragg, NC 28307–5200.

Commander, U.S. Army Space and Missile Defense Command, P.O. Box 15280, 111 South George Mason Drive, Arlington, VA 22215–0280.

Commander, U.S. Army Training and Doctrine Command, 102 McNair, Fort Monroe, VA 23651–1047.

Commander, U.S. Army Pacific, Fort Shafter, HI 96858–5100.

Commander, U.S. Army Operational Test and Evaluation, Command, 4501 Ford Avenue, Alexandria, VA 22302–1458.

Commander, Eighth U.S. Army, APO AP 96205–0010.

Commander, U.S. Military Traffic Management Command, 200 Stovall Street, Alexandria, VA 22332–5000.

Unified Commands

Commander, U.S. European Command, Unit 30400 Box 10000, APO AE 09128–4209.

Commander, U.S. Southern Command, 3511 NW 91st Avenue, Miami, FL 33172–1217.

Commander, U.S. Special Operations Command, 7701 Tampa Point Boulevard, MacDill Air Force Base, FL 33621–5357.

Commander, U.S. Atlantic Command, 1562 Mitscher Avenue, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, Honolulu, HI 96861–4031.

Commander, U.S. Space Command, 250 South Peterson Boulevard, Peterson AFB, CO 80914–3190.

Commander, U.S. Transportation Command, 508 Scott Drive, Scott AFB, IL 62225–5357.

Commander, U.S. Strategic Command, 901 Sac Boulevard, Offutt AFB, NE 68113–6000.

[FR Doc. 03–11569 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Final Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for Aluminum Company of America (Alcoa) Inc.'s Proposal To Construct and Operate Three Oaks Mine in Lee and Bastrop Counties, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Fort Worth District has prepared a Final Environmental Impact Statement (FEIS). This FEIS evaluates potential impacts to the natural, physical and human environment as a result of the proposed mining activities associated with Aluminum Company of America (Alcoa) Inc.'s proposed Three Oaks Mine. The USACE regulates this proposed project pursuant to Section 404 of the Clean Water Act. The proposed activity would involve the discharge of dredged and fill material into waters of the United States associated with the proposed construction and operation of a surface lignite mine. The document was prepared following a public review and 74-day comment period on the Draft Environmental Impact Statement (DEIS), during which time a public information meeting was held on October 1, 2002, and a public hearing was held on October 2, 2002. Both meetings were held in Elgin, Bastrop County, Texas.

DATES: Submit comments by June 23, 2003.

ADDRESSES: Send written comments and suggestions concerning this proposal to Ms. Jennifer Walker, Regulatory Project Manager, Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300 or via e-mail: *3oakseis@swf02.usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Walker, Regulatory Project Manager at (817) 886–1733 or via e-mail: *3oakseis@swf02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: Discharges of dredged or fill material into waters of the United States are regulated by the USACE under Section 404 of the Clean Water Act. Alcoa must also address the proposed project's environmental impacts relative to other regulations including the Clean Air Act, other sections of the Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act. In accordance with NEPA, the FEIS evaluates practicable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the ''no action'' alternative as a baseline for gauging potential impacts.

Copies of the FEIS may be obtained by contacting USACE Fort Worth District Regulatory Branch at (817) 886–1731 or from Three Oaks Mine EIS link found at the bottom of the Fort Worth District USACE Internet home page at *http://www.swf.usace.army.mil.*

Copies of the FEIS are also available for inspection at the locations identified below:

(1) Bastrop City Hall, 902 Main Street, Bastrop, TX 78602.

(2) Lexington City Hall, PO Box 56, Lexington, TX 78947.

(3) Austin City Hall, 124 West 8th Street, PO Box 1088, Austin, TX 78767.

(4) Rockdale City Hall, PO Box 586, Rockdale, TX 76567.

(5) Elgin City Hall, PO Box 591, Elgin, TX 78621.

(6) Giddings City Hall, 118 E. Richmond Street, Giddings, TX 78942.

(7) Lee County Courthouse, PO Box 390, Giddings, TX 78942.

(8) Milam County Courthouse, PO Box 1008, Cameron, TX 76520.

(9) Bastrop County Courthouse, 804 Pecan Street, Bastrop, TX 78602.

(10) Travis County Courthouse, 1000 Guadalupe Street, PO Box 1748, Austin, TX 78767.

(11) City of Austin Library—Milwood Branch, 12500 Amherst Drive, Austin, TX 78727.

(12) City of Austin Library—John Henry Faulk Branch, 800 Guadalupe, Austin, TX 78701.

(13) City of Austin Library—Will Hampton at Oak Hill Branch, 5125 Convict Hill Road, Austin, TX 78749.

(14) City of Bastrop Public Library, 1100 Church Street, Bastrop, TX 78602.

(15) City of Elgin Public Library, 404 North Main Street, Elgin, TX 78621.

(16) City of Giddings Public Library, 177 South Madison Street, Giddings, TX 78942.

(17) City of Rockdale Public Library, 201 Ackerman Street, Rockdale, TX 76567.

The Record of Decision (ROD) will be signed no sooner than 45 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

Wayne A. Lea,

Chief, Regulatory Branch.

[FR Doc. 03–11149 Filed 5–8–03; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a records system.

SUMMARY: The Department of the Navy is amending eighteen of records notices in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The amendments are administrative and consist of replacing 'Commander in Chief' with 'Commander' throughout these eighteen notices. This change is based on the Secretary of Defense memorandum dated October 24, 2002, in which he states that 'Commander in Chief' shall only be used to connote the President of the United States of America.

DATES: The amendments will be effective on June 9, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend several system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01640–1

SYSTEM NAME:

Individual Correctional Records.

SYSTEM LOCATION:

United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members confined in a naval facility as a result of or pending trial by courts-martial; military members sentenced to three days bread and water or diminished rations; and military members awarded correctional custody to be served in a correctional custody unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to the administration of individual prisoners in the Department of the Navy confinement and correctional custody facilities—courts martial orders; release orders; confinement orders; medical examiners' reports; requests and receipts for health and comfort supplies; reports and recommendations relative to disciplinary actions; clothing and equipment records; mail and visiting lists and records; personal history records; individual prisoner utilization records; requests for interview; initial interview; spot reports; prisoner identification records; parolee agreements; inspection record of prisoner in segregation; personal funds records; valuables and property record; daily report of prisoners received and released; admission classification summary; social history; clemency recommendations and actions; parole recommendations and actions; restoration recommendations and actions; psychiatric, psychological, and sociological reports; certificate of parole; certificate of release from parole; requests to transfer prisoners; disciplinary action data cards showing name, grade, Social Security Number, sex, education, sentence, offense(s), sentence computation, organization, ethnic group, discharge awarded, length of unauthorized absence, number and type of prior punishments, length of service, and type release; weekly status report (each member's legal status, offense charged, length of time confined). On tape, the same data as the disciplinary action data card, except name, computation of sentence. Names, addresses, and telephone numbers of victims/witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951; 42 U.S.C. 10601 *et seq.*, Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole; and to notify victims/witnesses of crime of release related activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local law enforcement and investigative agencies for investigation and possible criminal prosecution, civil court actions or regulatory order.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

To confinement/correctional system agencies for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty, and parole actions; verifications concerning military offenders or military criminal records, employment records and social histories.

To victims and witnesses of a crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer data base is password protected.

RETENTION AND DISPOSAL:

Two years after a prisoner is released or transferred from a brig or expiration of parole, prisoner records are transferred to the appropriate Federal Records Center.

Federal Records Center Atlanta, 1557 St. Joseph Avenue, East Point, GA 30344 has records from ashore brigs under the area coordination of the Commander, U.S. Atlantic Fleet; Commander, U.S. Naval Forces Europe; Commander, Naval Education and Training, afloat brig on Atlantic Fleet ships, and Navy Consolidated Brig, Charleston.

Federal Records Center Los Angeles, 2400 Avila Road, P.O. Box 6719, Laguna Niegel, CA 92607–6719 has records for ashore brigs under the area consideration of the Commander, U.S. Pacific Fleet; afloat brigs on Pacific Fleet ships; and Navy Consolidated Brig, Miramar.

Records of prisoners accompany their transfer to other facilities.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Chief of Naval Personnel (Pers 84), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5084, and Commandant of the Marine Corps (Code MHC), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001. Record Holders: United States Navy Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084. Requests should include full name and social security number and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084. Requests should include full name and Social Security Number and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records; military financial and medical records; military and civilian investigative and law enforcement agencies; courts-martial proceedings; records of non-judicial administrative proceedings; United States military commanders; staff members and cadre supply information relative to service member's conduct or duty performance; and other individuals or organizations which may supply information relevant to the purpose for which this system was designed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N01650–1

SYSTEM NAME:

Awards Information Management System and Records.

SYSTEM LOCATION:

DATABASE LOCATION:

Naval Computer Telecommunications Station, Washington Navy Yard, Washington, DC 20374–1435.

USER LOCATIONS:

Chief of Naval Operations (N09B33), 2000 Navy Pentagon, Washington, DC 20350–2000;

Secretary of the Navy Administrative Office, 1000 Navy Pentagon, Washington, DC 20350–1000;

Chief of Naval Personnel (Pers-324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (MHM), 2 Navy Annex, Washington, DC 20380–0001;

National Personnel Records Center, 9700 Page Avenue, St. Louis. MO 63132–5100 and Fleet Commanders and Type Commanders. Official mailing addresses for the Fleet Commanders and Type Commanders are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. military recipients (includes U.S. Coast Guard) of Navy personal awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Awards Information Management System (AIMS): contains electronic records of individual personal awards for 1967 and continuing and unit awards for 1941 and continuing that are maintained by the Board of Decorations and Medals (BDM). Data includes information extracted from OPNAV Form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Code, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy (SECNAV), Board's recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, etc.

MASTER RECORD OF AWARDS TO NAVY AND MARINE CORPS PERSONNEL MAINTAINED BY THE BOARD OF DECORATIONS AND MEDALS:

File includes awards approved by SECNAV and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, award approved, and a narrative summary of the SECNAV approved citation. A second section of the file contains activities awarded Unit Awards and the dates of eligibility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); Secretary of the Navy Instruction 1650.1F, Navy and Marine Corps Awards Manual.

PURPOSE(S):

To maintain records of military personal awards and unit awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized data base; microfiche; and paper records.

RETRIEVABILITY:

Social Security Number and individual or unit name.

SAFEGUARDS:

Automated data base requires authorized access; password protected; some user sites only have read capability; designated user capability regarding add/delete/change functions. Paper and microfiche records are under the control of authorized personnel during working hours and the office space in which records are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Permanent. A duplicate copy of the active file is provided to the National Archives and Records Administration. History files for the years 1967 to 1989 have been transferred to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, award time-frame, and service component.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, award time-frame, and service component.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

OPNAV Form 1650/3, Personal Award Recommendation Form, general orders, award letter 1650.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N03501–2

SYSTEM NAME:

Navy Recovery Data Base System.

SYSTEM LOCATION:

PRIMARY LOCATION:

Commander, Naval Facilities Engineering Command (Code 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

SECONDARY SYSTEM:

Principal Planning Agents are the Commander, U.S. Pacific Fleet, 250 Makalapa Drive, Pearl Harbor, HI 96860–7000 and Commander, U.S. Atlantic Fleet, Norfolk, VA 23511–2487. The Regional Planning Agents are the Commander, Naval Base, Seattle, WA 98115–5012, the Commandant Naval District Washington, Washington Navy Yard, Washington, DC 20374–2002; the Commander, Naval Base San Francisco, Naval Station, Treasure Island, San Francisco, CA 94130–5018; the Commander, Naval Base, 937 North Harbor Drive, San Diego, CA 93132–5100; the Commander, Naval Base, Box 110, Pearl Harbor, HI 96860; the Commander, Naval Base, Philadelphia, PA 19112–5098; the Commander, Naval Base, Norfolk, VA 23511–6002; the Commander, Naval Training Center, Building 1, Great Lakes, IL 60088–5026; the Chief of Naval Air Training, Naval Air Station, Corpus Christi, TX 78419–5100 and the Commander, Naval Base, Charleston, SC 29408–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected Naval Reserve Officers assigned to appropriate civil/military headquarters to represent Department of the Navy (DON) planning agents in planning and coordinating DON assistance to civil authorities in civil emergencies/disasters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, home addresses and telephone numbers of Navy Reserve Officers currently assigned to the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist in the operation and administration of the Department of the Navy Civil Disaster Assistance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are stored vary; but include magnetic disks and file copies.

RETRIEVABILITY:

Automated records may be retrieved by name or area of responsibility.

SAFEGUARDS:

Records are available only to authorized personnel having a need-to-know through the use of access codes and encrypted data.

RETENTION AND DISPOSAL:

Records on Navy Reserve Officers are retained only for their tour of duty while assigned to the program and superseded data is removed from the system or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Facilities Engineering Command (FAC 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Naval Facilities Engineering Command (FAC 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

Requests received by mail must be accompanied by the individual's full name and a statement verifying the requester's identity. Requesters may also inquire in person at the naval base or station. In such case, proof of identity will consist of full name and a positive piece of identification such as a driver's license or DOD I.D. card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Naval

Facilities Engineering Command (FAC 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The information is supplied by the Naval Reserve Officer upon his/her assignment to the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–1

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a record of correspondence received and responses made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel and projects, such as Name, Social Security Number, date of birth, photo id, grade and series or rank/rate, etc., of personnel; location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual

aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–3

SYSTEM NAME:

Organization Locator and Social Roster.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel attached to the activity, Departments of the Navy and Defense, or other government agencies; family members; and guests or other invitees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets, protocol, and other information associated with attendants at functions. Locator records of personnel attached to the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To notify personnel of arrival of visitors; recall personnel to duty station when required; locate individuals on routine matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Name, Social Security Number, and/or organization code.

SAFEGUARDS:

Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed upon update of roster to add/delete individuals who have arrived/departed the organization.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and records of the activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05100–3

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel whose work requires them to wear, or are issued, protective clothing or equipment, including prescription safety lenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listings, cards, and other records which list individuals requiring, authorized, or issued prescription or other safety equipment. Such listings may include name, Social Security Number, organization code, date equipment issued, date equipment returned, equipment I.D. number, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine who needs, is eligible, or has been authorized or issued prescription or other safety equipment for protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, or date equipment was issued.

SAFEGUARDS:

File areas are accessible only to authorized persons who are properly screened, cleared, and trained. Computer terminals/personal computers are password protected.

RETENTION AND DISPOSAL:

Destroy when equipment is returned or inventoried.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05211–1

SYSTEM NAME:

Privacy Act Request Files and Tracking System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official

mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Navy or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters authorizing release to another individual, letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974.

Names, addresses, and other personal identifiers of the individual requester. Data base which tracks action from start to finish.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, the Privacy Act of 1974, as amended; and E.O. 9397 (SSN).

PURPOSE(S):

To track, process, and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records; to compile information for reports, and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, microfilm, manual/computerized data bases, and/or optical disk.

RETRIEVABILITY:

Name of requester; year request filed; serial number of response letter; case file number; etc.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Computerized data bases are password protected and accessed by individuals who have a need to know.

RETENTION AND DISPOSAL:

Granted requests, responses to requests for non-existent records, responses to requesters who provide inadequate descriptions and responses to requesters who fail to pay agency reproduction fees that are not appealed are destroyed 2 years after date of reply; requests which are denied and are appealed are destroyed after 5 years; requests which are amended are retained for 4 years; requests for amendment which are refused are destroyed after 3 years; disclosure accounting forms are retained for the life of the record of 5 years after the disclosure, whichever is later; and privacy act databases are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD HOLDERS:

Organizational elements of the Department of the Navy;

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488; and

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Navy's compilation of systems of records notices.

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Navy's compilation of systems of records notices.

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Secretary of the Navy Instruction 5211.5D; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Navy organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those ''other'' systems of records are entered into these PA case records, the Department of the Navy hereby claims the same exemptions for the records as they have in the original primary systems of records of which they are a part. Department of the Navy exemption rules have been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05354–1

SYSTEM NAME:

Equal Opportunity Management Information System.

SYSTEM LOCATION:

Primary location: Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; local activity to which

individual is attached. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Commander, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

Secondary location: Department of the Navy activities in the chain of command between the local activity and the headquarters level. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who are involved in formal or informal complaints or investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incident data, endorsements and recommendations, formal and informal complaints and investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist in equal opportunity measures, including but not limited to, complaints, investigations, and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper files, microfiche, or microform.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained and cleared. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; or, in accordance with the Directory of Department of the Navy Mailing Addresses (*i.e.*, local activities).

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to file SF 450, SF 278, and/or DD Form 1787.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 450, Confidential Statement of Affiliations and Financial Interests; SF 278, Financial Disclosure Report; DD Form 1787, Report of DOD and Defense Related Employment; Position Descriptions; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Pub.L. 95–521, Ethics in Government Act of 1978; E.O. 11222; and E.O. 9397 (SSN).

PURPOSE(S):

To permit supervisors, counselors, and other responsible DON officials to determine whether there are actual or apparent conflicts of interests between members' or employees' present and prospective official duties and their nonfederal affiliations and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Information is locked in a file cabinet accessible to authorized personnel only.

RETENTION AND DISPOSAL:

SF 450 and a complete record of all action taken thereon are retained for a period of six years in a central location within the command or activity to which the reporting official was assigned at the time of filing, after which they will be destroyed.

SF 278 and DD Forms 1787 are retained for six years from the date of filing, and then destroyed unless needed for any investigation in which case they shall be held pending completion of the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: General Counsel of the Navy, 720 Kennon Street SE., Room 214, Washington Navy Yard, DC 20374–5012 and Judge Advocate General, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, DC 20375–5066.

RECORD HOLDER:

Commanding Officer or head of the organization in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, his/her supervisor, and ethics counselor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05380–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O.s 10927 and 12353, E.O. 9397 (SSN).

PURPOSE(S):

To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide the respective campaign coordinator with necessary information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computerized records.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the

individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; payroll files; personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05500–1

SYSTEM NAME:

Security Inspection and Violation System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in security violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security violation reports, security inspection reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To identify problem areas in security indoctrination, to alert command management officials to areas which present larger than normal security problems and identify personnel who are cited as responsible for non-compliance with procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

File folders, card files, personal computers, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after completion of final corrective or disciplinary action.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests must be signed and contain the individual's name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests must be signed and contain the individual's name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; records of the activity; investigator's reports; witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512–1

SYSTEM NAME:

Vehicle Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have registered their vehicles, boats, or trailers at a Navy/combatant command installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number, Driver's license information (*i.e.*, height, weight, hair and eye color), place of employment, driving record, Military I.D. information, etc.

File also contains records/notations of traffic violations, citations, suspensions,

applications for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of each individual who has registered a vehicle in an installation to include a record on individuals authorized to operate official government vehicles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, computerized data base and on magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, case number, and organization.

SAFEGUARDS:

Limited access provided on a need-to-know basis only. Information maintained on computers is password protected. Files maintained in locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and requests must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, driving record, insurance papers, activity correspondence, investigators reports, and witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512–2

SYSTEM NAME:

Badge and Access Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy/combatant command and any visitor (military, civilian, or contractor) requiring access to a controlled facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity/contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; OPNAVINST 5530.14C, DON Physical Security and Loss Prevention; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain all aspects of proper access control; to issue badges; replace lost badges; to retrieve passes upon separation; to maintain visitor statistics; and collect information to adjudicate access.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To designated contractors, Federal agencies and foreign governments for the purpose of granting Navy officials access to their facility.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, magnetic tape, personal computers, and electronic badging system.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization, and company name.

SAFEGUARDS:

Access is provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Badges and passes are destroyed three months after return to issuing office. Records of issuance are destroyed six months after new accountability system is established or one year after final disposition of each issuance record is

entered in retention log or similar record, whichever is earlier. Visit request records are destroyed two years after final entry or two years after date of document, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official for Security Badges: Chief of Naval Operations (N09N2), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD HOLDER:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Visit requests; individual; records of the activity; investigators; witnesses; contractors; companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05880–2

SYSTEM NAME:

Admiralty Claims Files.

SYSTEM LOCATION:

Office of the Judge Advocate General; Office of the Commander, United States Naval Forces Europe; Office of the Commander Sixth Fleet; and the Federal Records Center, Suitland, MD. Local commands with which claims under the Public Vessels Act and the Suits in Admiralty Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101.

PURPOSE(S):

To evaluate admiralty claims asserted for and against the Navy for settlement and for litigation support to the Department of Justice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices and duplicate portions of the records are also stored in computer system.

RETRIEVABILITY:

Name of claimant or ship.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Computer files subject to controlled access and maintained on a controlled access server.

RETENTION AND DISPOSAL:

Records are retained at OJAG headquarters as long as necessary and destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, Washington DC 20374–1566.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, Washington DC 20374–1566.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, Washington DC 20374–1566.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, *e.g.,* driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations

are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: X-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports; witnesses; and correspondence from claimants and their representatives.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07320–1

SYSTEM NAME:

Property Accountability Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who receives and signs for government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To identify individuals to whom government property has been issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The receipts may be maintained in any of the following formats: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, computerized data base, charge out cards or any other statement of individual accountability for receipt of government property.

RETRIEVABILITY:

Retrievability may be by any of the following: Name, Social Security Number, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

SAFEGUARDS:

Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.

RETENTION AND DISPOSAL:

Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the commanding officer or officer in charge of the activity where the property accountability records are maintained.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is collected directly from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N08370–1

SYSTEM NAME:

Weapons Registration.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals registering firearms or other weapons with station security officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Weapon registration records, weapon permit records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To assure proper control of weapons on installations and to monitor and control purchase and disposition of weapons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need-to-know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per Secretary of the Navy Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of activity, investigators, witnesses, and correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12610–1

SYSTEM NAME:

Hours of Duty Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To effectively manage the work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computerized records.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11571 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on June 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on April 21, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05100–4

SYSTEM NAME:

Occupational Injuries/Illnesses Log.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military, civilian personnel, non-appropriated and foreign national civilian personnel who are involved in accidents or occupational illnesses that result in lost time, government or private property damage or destruction, and personnel injury or death.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Log contains a civilian/military indicator, event reference number, case or file number, unit identification code (UIC), activity name, major command code, last name, first name and middle initial, department, sex, age, job title, rank/rate/grade, Social Security Number, date of mishap/illness, time of mishap/illness, general location of mishap/illness, lost workday count, injury/illness type, Occupational Safety and Health Administration (OSHA) code, part(s) of body injured, mishap/illness type, object involved (injury source), process control number (job/activity at time of mishap), chemical involved, chemical comments, formal training involved; case type (fatality, lost time, no lost time, first aid), mishap class, date of death, short narrative, start date, sent date, and claims information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; and E.O. 12196, Occupational Safety and Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To collect injury and occupational illnesses required of Federal governmental agencies by the Occupational Safety and Health Administration (OSHA). The summary data of occupational injuries or illnesses maintained in this log will be used for analytical purposes to improve the Department of the Navy's accident prevention policies, procedures, standards, and operations as well as ensure internal data quality assurance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By individual's name, Social Security Number, location of the accident or illness, or date of mishap or illness.

SAFEGUARDS:

File cabinets and computer terminals are located in limited access areas and handled by personnel that are properly trained in working with automated Privacy Act systems of records. Computer terminals are password protected.

RETENTION AND DISPOSAL:

Naval Safety Center computerized records are maintained for 20 fiscal years following the end of the fiscal year to which they relate. All other records held outside of the Naval Safety Center are maintained for five years following the end of the fiscal year to which they relate and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

LOCAL RECORD HOLDERS:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the local activity where the mishap or injury occurred.

The request should contain full name, Social Security Number and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of the local activity where the mishap or injury occurred.

The request should contain full name, Social Security Number and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Mishap Investigation Reports, departmental records such as personnel file excerpts, medical record excerpts, State and Federal records, and excerpts of police reports, witness statements and general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11578 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a records system.

SUMMARY: The Department of the Navy proposes to amend a system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report. The records system being amended is set forth below, as amended, published in its entirety.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520–5

SYSTEM NAME:

Personnel Security Program Management Records System (January 23, 1998, 63 FR 3546).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the first paragraph and replace with ''Individual''s name (both current, former, and alternate names), Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Buildings are security-controlled areas accessible only to authorized persons. Department of the Navy Central Adjudications Facility (DON CAF) primary system paper, microfilm and electronic/optical imaged records are maintained in General Service Administration (GSA) approved security containers and/or are stored in security controlled areas accessible only to authorized persons. If classified, locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type lock combination padlock, or in similarly protected containers. Sensitive but unclassified records are stored on open shelves and filing cabinets located in secure areas accessible only to authorized personnel. Electronically and optically stored records are maintained in a ''fail-safe'' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to the NCIS Records Management Division for storage are in an alarmed area approved for open storage, monitored and stored on open shelves, in GSA approved security containers and filing cabinets located in secure areas accessible only to authorized personnel.

DON CAF employees authorized to work offsite will safeguard government/agency records from unauthorized disclosure or damage by transporting only unclassified records in secured briefcases, satchels or boxes. When not in use by the offsite employee, all records or case-related material is stored in a locked file cabinet or desk in the areas designated that is accessible only to authorized persons. Some documents will be prepared on government computers by DON CAF employees at designated offsite locations. When offsite, computers are not authorized to be connected to any network, and no data is authorized to be stored to any employee's personal computer storage device. Documents prepared at designated offsite locations and or temporarily held for the purposes of offsite work will not be printed at any unauthorized offsite location.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Investigative/adjudicative records on non-DoD-affiliated persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Adjudication decisions that are entered into electronic systems such as JPAS and NJACS, to include decisions by DON CAF employees based on contractor case review records containing recommendations on the suitability of individuals for security clearance and reviews with no or minor issues that do not require the creation of a dossier, are destroyed/deleted 1 year after affiliation is terminated. Reviews with issues are filed for 15 or 25 years as cited below. Contractor case review records are destroyed one year after verification that the case review record information is accurately entered into the electronic system.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment

or affiliation. General and flag officer data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD–ROM records are destroyed as required by Information Assurance Remanence Security Publication 5239–26 of May 2000.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information in this system comes from the individual, cognizant security manager or other official sponsoring the security clearance/determination for the subject and from information provided by other sources, *e.g.*, personnel security investigations, personal financial records, military service records and the subject.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete the first paragraph.

* * * * *

N05520–5

SYSTEM NAME:

Personnel Security Program Management Records System.

SYSTEM LOCATION:

Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5389 with some portions of the record created and temporarily held at designated off-site locations.

SYSTEM COMPUTER FACILITY:

Defense Security Service, Personnel Investigations Center, 88 Eldridge Landing Road, Linthicum, MD 21090–2902.

RECORD DOCUMENTATION:

Naval Criminal Investigative Service, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5380.

DECENTRALIZED SEGMENTS:

The security office of command to which the individual is assigned; Naval Security Group, 9800 Savage Road, Fort Meade, MD 20755–6585; Office of Naval Intelligence (OCB3), 4251 Suitland Road, Washington, DC 20395–5720; and, Headquarters, Naval Criminal Investigative Service, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5380.

Additionally, duplicate portions of records may be held by the Navy Personnel Command (Pers-83), 5720 Integrity Drive, Millington, TN 38055–0600; servicing Human Resource Offices; Naval Reserve Personnel Center, 4400 Dauphine Boulevard, New Orleans, LA 70149–7800; Headquarters, U.S. Marine Corps (Code MIF), James Wesley Marsh Center, 3280 Russell Road, Quantico, VA 22143–5103; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Navy military personnel and civilian employees and certain ''affiliated employees'' whose duties require or may in the future require a DON security clearance or assignment to sensitive positions and aliens being processed for access to National Security information. Also included are DON adjudicative actions for all U.S. Coast Guard (USCG) military personnel and those USCG civilian employees having access to sensitive compartmented information only. Individuals adjudicated as a result of interservice and interagency support agreements. ''Affiliated employees'' include contractors, consultants, non-appropriated fund employees, USO personnel and Red-Cross volunteers and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name (both current, former, and alternate names), Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process, and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program

The documentation system includes information pertaining to the investigation, inquiry, or its adjudication by clearance authority to include: (1) Chronology of the investigation, inquiry, and/or adjudication; (2) all recommendations regarding future status of subject; (3) decisions of security/loyalty review boards and Defense Office of Hearings and Appeals (DOHA); (4) final actions/determinations made regarding subject; and (5) security clearance, access authorizations, or security determination; index tracings that contain aliases and names of subject as reflected in Defense Clearance and Investigations Index (DCII) under system notice V5–02; security termination; notification of denial, suspension, or revocation of clearance or access; classified nondisclosure agreements created from 1987 to early 1992 and managed by DON CAF; and other documentation related to the adjudication decision.

At local command security offices information includes tickler copies of requests for clearance and access; records of access, reports of disqualifying/derogatory information; records of clearance of individual personnel as well as accreditation of personnel for access to classified information requiring special access authorizations; nondisclosure agreements, associated briefings and debriefing statements; and other related records supporting the Personnel Security Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7311; 10 U.S.C. 5013; and E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2–9, and 14; E.O. 12958, Classified National Security Information; E.O. 12968, Access to Classified Information; DoD Regulation 5200.2–R, Personnel Security Program Regulation; and OPNAV Instruction 5510.30A, Department of Navy Personnel Security Program.

PURPOSE(S):

To provide a comprehensive system to manage information required to adjudicate and document the eligibility of DON military, civilian, and certain affiliated employees for access to classified information and assignment to sensitive positions.

These records are also used to make determinations of suitability for promotion, employment, or assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel officer actions as provided for in DoD Instruction 1320.4, Military Officer Actions Requiring Approval of

the Secretary of Defense or the President, or Confirmation by the Senate.

To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries for purposes of determining access to National Security information.

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in file folders, audio or audiovisual tapes, micro-imaging; CD-ROM; optical digital data disk; computers; magnetic tapes, disks, and drums; and computer output products.

RETRIEVABILITY:

By name, dossier number, Social Security Number, and date and place of birth.

SAFEGUARDS:

Buildings are security-controlled areas accessible only to authorized persons. Department of the Navy Central Adjudications Facility (DON CAF) primary system paper, microfilm and electronic/optical imaged records are maintained in General Service Administration (GSA) approved security containers and/or are stored in security controlled areas accessible only to authorized persons. If classified, locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type lock combination padlock, or in similarly protected containers. Sensitive but unclassified records are stored on open shelves and filing cabinets located in secure areas accessible only to authorized personnel. Electronically and optically stored records are maintained in a ''fail-safe'' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to the NCIS Records Management Division for storage are in an alarmed area approved for open storage, monitored and stored on open shelves, in GSA approved security containers and filing cabinets located in secure areas accessible only to authorized personnel.

DON CAF employees authorized to work offsite will safeguard government/agency records from unauthorized disclosure or damage by transporting only unclassified records in secured briefcases, satchels or boxes. When not in use by the offsite employee, all records or case-related material is stored in a locked file cabinet or desk in the areas designated that is accessible only to authorized persons. Some documents will be prepared on government computers by DON CAF employees at designated offsite locations. When offsite, computers are not authorized to be connected to any network, and no data is authorized to be stored to any employee's personal computer storage device. Documents prepared at designated offsite locations and or temporarily held for the purposes of offsite work will not be printed at any unauthorized offsite location.

RETENTION AND DISPOSAL:

Investigative/adjudicative records on non-DoD-affiliated persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Adjudication decisions that are entered into electronic systems such as JPAS and NJACS, to include decisions by DON CAF employees based on contractor case review records containing recommendations on the suitability of individuals for security clearance and reviews with no or minor issues that do not require the creation of a dossier, are destroyed/deleted 1 year after affiliation is terminated. Reviews with issues are filed for 15 or 25 years as cited below. Contractor case review records are destroyed one year after verification that the case review record information is accurately entered into the electronic system.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment or affiliation. General and flag officer data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD-ROM records are destroyed as required by Information Assurance Remanence Security Publication 5239–26 of May 2000.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE, Suite 2000, Washington Navy Yard, DC 20388–5389.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states ''I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct''. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other

information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request ''Privacy Act Request''.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states ''I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct''. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request with ''Privacy Act Request''.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

Attorneys or other persons acting on behalf of an individual must provide a written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual, cognizant security manager or other official sponsoring the security clearance/determination for the subject and from information provided by other sources, *e.g.,* personnel security investigations, personal financial records, military service records and the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 03–11581 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293B]

Foreign Language Assistance Grants (Local Educational Agencies); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for an award under this program.

Purpose of Program: The Foreign Language Assistance Program (FLAP) provides grants to local educational agencies for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

For FY 2003 the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this notice.

Eligible Applicants: Local educational agencies (LEAs).

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of LEAs that intend to apply for funding under this competition. Therefore, we strongly encourage each potential applicant to notify the Department with a short e-mail noting the intent to submit an application for funding. The e-mail should not include information regarding the content of the proposed application. Please provide the following information:

(1) FLAP–LEA program 84:293B, (2) intent to apply, (3) planned number of applications, (4) school district, (5) city and (6) state. We request that this e-mail notification be sent no later than May 30, 2003. The e-mail should be sent to Ms. Amy Weinmann at *Amy.Weinmann@ed.gov*. Applicants that do not provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: June 13, 2003.

Deadline for Intergovernmental Review: August 13, 2003.

Estimated Available Funds: $10,000,000.

Estimated Range of Awards: $50,000–$175,000.

Estimated Average Size of Awards: $112,500.

Estimated Number of Awards: 89.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the itemized budget breakdown and the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

Description of Program: If you are an LEA that receives a grant under this

program, you must use the funds to provide a program that—

(A) Shows the promise of being continued beyond the project period; and

(B) Demonstrates approaches that can be disseminated and duplicated in other LEAs.

You may also use funds under this program to—

(C) Include a professional development component.

In order to build foreign language program capacity at the local level, cost sharing is required. You should note that the Federal share of the cost of activities assisted under this program for each fiscal year is 50 percent. The Secretary may waive this requirement for any LEA which the Secretary determines does not have adequate resources to pay the non-Federal share.

The Secretary does not fund projects that propose Native American languages, Native Hawaiian, other Pacific Island languages or Native Alaskan languages. In addition, the program is not intended to support the teaching of English.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application, depending on whether the application meets one or both of the following priorities.

Note: A total of 5 points will be awarded. There is no advantage in addressing both priorities, but you should not be dissuaded from addressing both priorities in your application if they provide a program that will meet the needs of your students and community. These points are in addition to any points the applicant earns under the selection criteria.

(1) Applications proposing to establish, improve, or expand foreign language learning in any or all of the following grades, Kindergarten through eighth grade, that teach any or all of the following less commonly taught languages of major economic and political importance to the United States: Russian, Chinese and Arabic.

(2) Applications proposing to establish a foreign language program in underserved schools. For the purpose of this priority an underserved school is defined as a school that does not currently have a foreign language program implemented during the school day, including two-way immersion and heritage language programs, and has not had one in the previous two school years 2001–2002 and 2002–2003.

Competitive Preferences

Under 34 CFR 75.105(c)(2)(ii) we give preference to applications that meet one of the following priorities over an application of comparable merit that does not meet one of the priorities.

Note: There is no advantage in addressing all five priorities. Creating a program around the five priorities may result in a scattered or unfocused program design.

We give preference to applications describing programs that:

(1) Include intensive summer foreign language programs for professional development;

(2) Link non-native English speakers in the community with the schools in order to promote two-way language learning;

(3) Promote the sequential study of a foreign language for students, beginning in elementary schools;

(4) Make effective use of technology, such as computer-assisted instruction, language laboratories, or distance learning, to promote foreign language study; or

(5) Promote innovative activities, such as foreign language immersion, partial foreign language immersion, or content-based instruction.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and selection criteria. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the Foreign Language Assistance Program as substantially revised by the No Child Left Behind Act of 2001. The requirements will apply to the FY 2003 grant competition only.

Reporting Requirements and Expected Outcomes

The Secretary requires successful applicants to submit annual performance reports that document the grantee's yearly progress toward meeting expected programmatic outcomes. These outcomes should be based on measurable performance objectives. The Secretary will use these reports to measure the success of the grantee's project, and the reports will contribute to a broader knowledge base about high-quality, effective foreign language programs. In addition, grantees will be required to submit a final performance report, due no later than 90 days after the end of the project period.

Selection Criteria

We use the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Significance.* (10 points)

We evaluate an application by determining how well the project proposed by the applicant meets the following statutory provisions:

(1) The extent to which the project shows the promise of being continued beyond the grant period.

(2) The extent to which the project demonstrates approaches that can be disseminated and duplicated in other local educational agencies.

(3) The extent to which the project will result in an effective effort to establish, improve or expand foreign language teaching and learning.

(b) *Quality of the product design.* (40 points)

In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the project design represents a comprehensive plan which effectively links identified needs, goals, objectives, activities and outcomes.

(2) The extent to which the goals, objectives and outcomes are clearly specified and measurable.

(3) The extent to which the design of the proposed project incorporates the National Foreign Language Standards and up-to-date knowledge from scientifically based research and effective practice.

(4) The extent to which the project design will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes, such as, student progress, capacity building and dissemination.

(5) The extent to which the project design will provide guidance about effective strategies suitable for disseminating and duplicating the project in other settings.

(6) The extent to which the project design will provide quantifiable data reflecting:

(i) Student proficiency in reading, writing, comprehending and communicating in the foreign language,

(ii) Usage of the National Foreign Language Standards (Communication, Culture, Connections, Comparisons and Communities),

(iii) Building local capacity to continue program components beyond the grant period, and

(iv) Disseminating and duplicating program approaches to other local educational agencies.

(c) *Quality of project services.* (8 points)

In determining the quality of the services to be provided by the proposed project, we consider the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(3) The likelihood that the services to be provided will lead to improvements in the achievement of students as measured against rigorous academic standards.

(d) *Quality of project personnel.* (12 points)

In determining the quality of project personnel, we consider the following:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel as required by position descriptions.

(3) The qualifications, including relevant training and experience of project teachers.

(e) *Adequacy of resources.* (5 points)

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan.* (10 points)

In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The effectiveness of the management plan in demonstrating how the objectives and activities of the proposed project will be achieved on time, and within budget, including clearly defined responsibilities of staff, timelines, benchmarks, continuous improvement strategies and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (15 points)

In determining the quality of the project evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the evaluation plan will produce quantitative and qualitative data.

(3) The extent to which the evaluation plan will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes, such as, student progress, capacity building and dissemination.

(4) The extent to which the evaluation plan will provide guidance about effective strategies suitable for disseminating and duplicating the project in other settings.

(5) The extent to which the evaluation plan design will provide quantifiable data reflecting:

(i) Student proficiency in reading, writing, comprehending and communicating in the foreign language,

(ii) Usage of the National Foreign Language Standards (Communication, Culture, Connections, Comparisons and Communities),

(iii) Building local capacity to continue program components beyond the grant period, and

(iv) Disseminating and duplicating program approaches to other local educational agencies.

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in the actual application notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293B, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That This Address Is Not the Same Address as the One to Which an Applicant Submits Its Completed Application. Do Not Send Applications to the Above Address.

Application Instructions and Forms

The Appendix to this notice contains all required forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances, certifications and a checklist for applicants.

- Application for Federal Assistance (ED 424 (Exp. 11/30/2004)) and instructions and definitions.
- Protection of Human Subjects in Research (Attachment to ED 424).
- Budget Information—Non-Construction Programs (ED Form No. 524). Including Section A—Budget Summary, U.S. Department of Education Funds; Section B—Budget Summary, Non-Federal Funds; and Instructions for ED Form 524 containing Section C—Other Budget Information to provide an Itemized Budget Breakdown.
- Application Narrative. While no form is provided, the sections on **Instructions for Application Narrative** and **Page Limit** elsewhere in this application notice apply to your application narrative.

- Group Application Certification.
- Foreign Language Data Form.
- Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.
- Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) and instructions.
- Notice to All Applicants concerning the Department of Education's General Education Provisions Act (GEPA).
- Survey on Ensuring Equal Opportunity for Applicants.
- Program Non-Regulatory Guidance.

You may submit information on a photocopy of the application forms, the assurances, and the certifications. However, you must submit ONE original signed application, including ink signatures on all forms and assurances and THREE copies of the application. Please mark each application as original or copy. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document at the following site: *www.ed.gov/offices/OELA/funding.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: East of the Mississippi River—Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5617, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9717 or via Internet: *rebecca.richey@ed.gov.*

West of the Mississippi River—Itzetht Testa-Salcedo, U.S. Department of Education, 400 Maryland Avenue, SW., room 5629, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8726 or via Internet: *itzetht.testa-salcedo@ed.gov.*

Or, Sharon Manassa, U.S. Department of Education, 400 Maryland Avenue, SW., room 5647, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8731 or via Internet: *sharon.manassa@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail.*

You must mail the original and two copies on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA# (84.293B), 7th and D Streets, SW., Room 3633, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) ''If You Send Your Application by Mail,'' then follow the instructions in section (b) ''If You Deliver Your Application by Hand.''

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies by 4:30 p.m. (Washington, DC time) on or before the deadline date. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #293B), 7th and D Streets, SW., Room 3633, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier delivers it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U. S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Program Authority: 20 U.S.C. 7259–7259b.

Dated: May 5, 2003.

Kathleen Leos,

Senior Policy Advisor, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0540. Expiration date: 1/31/2006. We estimate the time required to complete this information collection to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and

complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5626, Switzer Building, Washington, DC 20202–6510.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program, the information regarding priorities, preferences and the selection criteria we use to evaluate applications.

Note: The section on PAGE LIMIT elsewhere in this application notice applies to your application.

1. Abstract. The narrative section should be preceded by a one-page, single-spaced Abstract summarizing your proposed Foreign Language Assistance Program. The Abstract should include a brief description of the project design, goals and the population to be served. If applicable, it is important to include information on the Competitive Priorities the project proposes to address. For Competitive Priority 1, be sure to include the language(s) and grade levels to be taught. For Competitive Priority 2, explain how the school qualifies as underserved. In addition, provide a short description of how the proposed program will not duplicate projects funded under Subpart 1 of Part A of Title VII of the Elementary and Secondary Education Act of 1965.

2. Table of Contents. Include a Table of Contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages of the narrative.

3. Selection Criteria. The narrative should fully address all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes. Instead, provide position descriptions for key personnel. Do not include bibliographies, letters of support or appendices in your application. Paginate all pages of the narrative. This package includes Program Guidance (Questions and Answers) to assist you in preparing the narrative portion of your application.

Checklist for Applicants

Use the following checklist to verify that all necessary items are addressed in your final application preparation. Prepare one original with an original signature and include three additional copies. Do not use elaborate bindings, notebooks or covers. The application package must be delivered to the Application Control Center (ACC) and postmarked by the deadline date published in this notice.

1. Application for Federal Assistance (ED 424 (Exp. 11/30/2004)).

2. Budget Information—Non-Construction Programs (ED Form No. 524).

- Section A—Complete the Budget Summary for U.S. Department of Education Funds requested for Project Years 1, 2 and 3,
- Section B—Complete the Budget Summary for Non-Federal Funds (local cost sharing) for Project Years 1, 2 and 3, and
- Section C—Provide an Itemized Budget Breakdown for Project Years 1, 2 and 3.
- A Budget Narrative may be provided for each of the 11 Budget Categories. It may be placed directly after the three Itemized Budgets and does not require double spacing or page numbers.

3. Group Application Certification, if more than one LEA is applying.

4. Foreign Language Data Form.

5. Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).

6. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98).

7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

8. Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) if applicable.

9. Applicant's response to the ''Notice to All Applicants'' concerning the Department of Education's General Education Provisions Act (GEPA).

10. Survey on Ensuring Equal Opportunity for Applicants.

11. Copy of letter to State Single Point of Contact (SPOC), if applicable.

12. Letter from an Authorized Representative of the school district requesting waiver of cost sharing requirement, if applicable.

13. Abstract. Including information on Competitive Priorities and Competitive Preferences, if applicable.

14. Table of Contents.

15. Application Narrative. No more than 35 pages using the section on **Page Limit** elsewhere in this application.

Foreign Language Assistance Program (FLAP) Grants to Local Educational Agencies Additional Non-Regulatory Guidance (Questions and Answers)

Q. Who is eligible to apply for a FLAP grant in this competition?

A. In this competition, eligibility is limited to local educational agencies. The term ''local educational agency'' means a public board of education or other public authority which maintains administrative control of public elementary or secondary schools in a city, county, township, school district or other political subdivision of a state. An intermediate unit within a State (*e.g.*, a Board of Cooperative Educational Services (a BOCES) may apply for and receive a grant.

Q. If awarded a grant, may a grantee count on receiving FLAP funding for the full period of three years?

A. The actual level of program funding, if any, depends on final Congressional action each fiscal year.

Q. Is the estimated range of awards $50,000 to $175,000 over the period of three years?

A. The estimated range of awards is $50,000 to $175,000 for each year.

Q. May an LEA submit a proposal for afternoon and/or Saturday foreign language instruction?

A. The purpose of the Foreign Language Assistance Program is to pay the Federal share of the cost of innovative model programs, providing for the establishment, improvement or expansion of foreign language study. Therefore, it is recommended that the majority of instruction be carried out during the traditional school day with supplemental activities in the afternoon and/or Saturday.

Q. What is not a foreign language?

A. The Secretary does not award grants to programs that teach Native American languages, Native Hawaiian, other Pacific Island languages or Native Alaskan languages. In addition, the program is not intended to support the teaching of English. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a two-way foreign language immersion program, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance Program may not be used to fund an activity that is solely or primarily concerned with English language instruction.

Q. How does an applicant for the Foreign Language Assistance Program address the requirements set forth by the Government Performance and Results Act (GPRA)?

A. Each applicant should align program goals, objectives and outcomes with the following GPRA indicators for the Foreign Language Assistance Program:

1. To increase student proficiency in reading, writing, comprehending and communicating in the foreign language.

2. To increase the usage of the National Foreign Language Standards (Communication, Culture, Connections, Comparisons and Communities).

3. To build local capacity to continue the foreign language program components beyond the grant period.

4. To disseminate and duplicate program approaches to other local educational agencies.

Q. What is the definition of an ''elementary school''?

A. The term ''elementary school'' means a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. The definition of this term is in section 9101 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Q. What is the definition of a ''secondary school''?

A. The term ''secondary school'' means a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond

grade 12. The definition of this term is in section 9101 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Q. May an applicant use FLAP funds to support a foreign language program for Pre-kindergarten children?

A. If your State defines Pre-kindergarten as elementary education, FLAP funds may be used to serve those students.

Q. Where are the State definitions of an ''elementary'' or ''secondary'' program?

A. If you do not know what grade levels in your State are considered elementary and secondary, you should consult with your State educational agency.

Q. In light of the Competitive Priorities for Kindergarten through eighth grade and programs that teach Russian, Chinese and Arabic; should districts submit proposals for high schools and teaching other foreign languages?

A. Yes, applications that propose programs at the high school level and foreign languages other than Russian, Chinese and Arabic are encouraged to apply.

Q. How much of the estimated $10 million in program funds will be used to fund elementary programs?

A. By law, not less than 75 percent of the total funds appropriated must be used for the expansion of foreign language learning in the elementary grades. This requirement does not apply to individual programs.

Q. What is scientifically based research (SBR)?

A. SBR is research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. Some of the critical elements of SBR are as follows:

- Scientific Method
  —Hypothesis
  —Controls are used
  —Outcome proves or disproves the hypothesis
- Replicated—repeat studies find the same results
- Generalized—study findings represent truth for the general population
- Meets Rigorous Standards—methods and conclusions must be confirmed by peer review
- Convergent findings—conclusions are in line with findings from other studies

Q. How does an applicant address the ''Notice to all Applicants'' concerning the Department of Education's General Education Provisions Act (GEPA)?

A. First, read the ''Notice to all Applicants'' included in the application package. Be sure to note the three examples included in the second column. Second, it is recommended that the applicant respond on a separate sheet of paper entitled ''GEPA''. The required response should include a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally assisted program for students, teachers, and other program beneficiaries with special needs.

Q. How does an applicant comply with Executive Order 12372, the Intergovernmental Review of Federal Programs, item #10 of the Application for Federal Education Assistance (ED 424)?

A. Applicants must first review the State Single Point of Contact (SPOC) list available at *http://www.whitehouse.gov/omb/grants/spoc.html.* If a State contact is included in the list, the applicant must contact the SPOC to inquire about the State's process under Executive Order 12372. If the State requests the application for review, a copy of the cover letter sent to the State contact must be submitted with the application package and Item #10 checked Yes with the date included. If the program is not covered by the Executive order, or the State has not selected the program for review, Item #10 must be checked No and the reason checked.

Q. What is the LEA's share of costs for the Foreign Language Assistance program for each fiscal year?

A. In order to build program capacity at the State and local level, cost sharing is required. The Federal share of the foreign language program for each fiscal year is restricted to 50 percent. Therefore, if the total cost of the proposed program is $100,000, the school district may request $50,000 in Federal funding. While a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities, it is recommended that the district share the cost to the extent possible. The Education Department General Administrative Regulations, at 34 CFR 80.24, addresses Federal Cost sharing requirements.

Q. How does an LEA apply for a waiver of the non-Federal share of costs?

A. It is suggested that local educational agencies wishing to request a waiver from the requirement attach a letter to the application. The waiver request, signed by the Authorized Representative, should include information that will assist in determining whether the local educational agency seeking a waiver does not have adequate resources to pay the non-Federal share of the costs of the activities assisted under the Foreign Language Assistance program.

Q. Who should sign as the Authorized Representative on the Application for Federal Assistance and other forms?

A. It is recommended that the Superintendent of Schools sign as the Authorized Representative.

Q. Under this program, may an applicant propose to hire foreign language teachers?

A. Yes, program funds may be used to hire foreign language teachers.

Q. May two districts apply together if they are already working together in a foreign language program?

A. Yes, the statute does not prohibit school districts from applying together. However, one district must be designated as the fiscal agent and the Group Application Certification must be included in the application package and signed by an authorized representative from each district. The requirements on group applications are in 34 CFR 75.127–75.129.

Q. How may an applicant access information on the National Foreign Language Standards when designing their program?

A. An applicant may access information on the National Standards, State-Level Foreign Language Standards, the National Foreign Language Resource Centers and other useful Web sites at: *http://www.cal.org/ericcll/faqs/rgos/flstandards.html.*

Q. How does an applicant access the statutory provisions authorizing FLAP (Sections 5492 and 5493 of the Elementary and Secondary Education Act)?

A. Applicants may access sections 5492 and 5493 at the following Web site: *http://www.ed.gov/offices/OELA/funding.html.*

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

Organizational Unit

1. Name and Address
Legal Name:_____

Address: _____

_____

_____ City _____ State _____ County _____ ZIP Code + 4

2. Applicant's D-U-N-S Number |___|___|___|___|___|___|___|___|___|

3. Applicant's T-I-N |___|___| - |___|___|___|___|___|___|___|

4. Catalog of Federal Domestic Assistance #: **84.293B**

Title: FOREIGN LANGUAGE ASSISTANCE PROGRAM

LOCAL EDUCATIONAL AGENCIES

5. Project Director:_____

Address:_____

_____ City _____ State _____ Zip code + 4
Tel. #: ( ) _____-_____ Fax #: ( )_____-_____

E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |____|

A - State	F - Independent School District
B - Local	G - Public College or University
C - Special District	H - Private, Non-profit College or University
D - Indian Tribe	I - Non-profit Organization
E - Individual	J - Private, Profit-Making Organization

K - Other (*Specify*): _____

Application Information

9. Type of Submission:

-PreApplication	*-Application*
___ Construction	___ Construction
___ Non-Construction	___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes (*Date made available to the Executive Order 12372 process for review):* ____/____/_____

___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____

___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

_____

_____

Estimated Funding

14a. Federal	$ _____	**.00**
b. Applicant	$ _____	**.00**
c. State	$ _____	**.00**
d. Local	$ _____	**.00**
e. Other	$ _____	**.00**
f. Program Income	$ _____	**.00**
g. TOTAL	$ _____	**.00**

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. Signature of Authorized Representative

_____ Date:___/____/_____

Instructions for Form ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com.**

3. **Tax Identification Number.** Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Novice Applicant.** Check **"Yes"** or "**No**" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, **leave blank.**

   Check "**Yes"** if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "**No**" if you do not meet the requirements for novice applicants.

7. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

8. **Type of Applicant.** Enter the appropriate letter in the box provided.

9. **Type of Submission.** See "Definitions for Form ED 424" attached.

10. **Executive Order 12372.** See "Definitions for Form ED 424" attached. Check **"Yes"** if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. **Human Subjects Research.** (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "**No**" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "**Yes**" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "**Yes**" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. **If Human Subjects Research is Exempt from the Human Subjects Regulations.** Check "**Yes**" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **If Human Subjects Research is Not Exempt from Human Subjects Regulations.** Check "**No**" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **Human Subjects Assurance Number.** If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves nonexempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show

breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the **only** involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are chil-***

dren, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12 a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12 a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) **Human Subjects Involvement and Characteristics**: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) **Sources of Materials**: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) **Recruitment and Informed Consent**: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) **Potential Risks**: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) **Protection Against Risk**: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) **Importance of the Knowledge to be Gained**: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) **Collaborating Site(s)**: If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

FOREIGN LANGUAGE DATA	
Name of Local Educational Agency	
Note: This section must be completed by local educational agencies applying under the following program: • **Foreign Language Assistance Grants**	
1. Total number of students in the school district	
2. Total number of students in the district enrolled in a foreign language program	
3. Foreign languages taught in the school district	

Elementary	**Secondary**
_____	_____
_____	_____
_____	_____

4. Name of project school	**Language(s) to be taught**	**Grade(s) to be served**	**Number of students to be served**

OMB Number 1885-0540 Expires 1/31/2006

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 FR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

OMB Number 1885-0551 Expires 10/31/2005

Paperwork Burden Statement: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1885–0551.** The time required to complete this information collection is estimated to average 4 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Native American and Alaska Native Children in School Program,** Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 5605, Washington, D.C. 20202-4651

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date:

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

[FR Doc. 03–11622 Filed 5–8–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

RIN 1820 ZA18

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Demographics and Statistics Center under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an area of national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register.** When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this proposed priority, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to:

(1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

We may make awards for up to 60 months to institutions of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their

representatives, providers, and other interested parties;

• Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and

• Involve individuals with disabilities and individuals from minority backgrounds as recipients or research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priority

Background

Policymakers, researchers, consumers, and advocates use information about the prevalence of disabilities for many purposes. Information about demographics and distribution of individuals with disabilities is essential in program planning and assessing performance. Data are key to evidence-based decisionmaking about the need for, costs of, and outcomes of assisting individuals with disabilities. Reliable and valid measures are necessary for evaluating disability policies, services, and outcomes.

The dynamic nature of disability challenges accurate measurement. Environmental and individual interactions complicate analysis. Causes and patterns of disability change constantly, straining the capacity of demographics to describe new populations and their impact on service systems. Immigrants, for example, especially those who are not legal residents, present unique challenges to the rehabilitation system. Emergent disabilities such as multiple chemical sensitivity (MCS), chronic fatigue immune deficiency syndrome (CFIDS), and fibromyalgia are examples where definitional factors complicate diagnosis, reporting, and analysis necessary to address policy and service issues. Population surveys on health and disability frequently lack an adequate number of low prevalence but potentially highly disabling cases necessary for statistical analyses.

Policymakers and program administrators need continual, rigorous improvement in data methods to identify and respond to disability trends. Decisionmakers and citizens must know the costs and benefits of services and policies for individuals with disabilities at home, in the community, and when learning or working. Measures and indicators of supports such as technology, personal assistance services, health insurance, and accommodations are needed in assessing factors that lead to high quality outcomes such as successful employment, community living, and educational success of people of all ages.

Lack of standard definitions, terminology, coding, classification, and measurement of disability and functioning often limits generalization of research findings. Extending use of research findings or population trends to inform policy or clinical interventions is limited due to the difficulty of extrapolating knowledge about disabilities that is gathered from a disparate range of data sources, classification and coding systems, and measures of disability. For example, it is important to estimate future potential demands on rehabilitation systems, but existing population data sources do not adequately provide for planning, development, and evaluation of rehabilitation services and population trends. The International Classification of Functioning, Disability, and Health (ICF) is a coding system that allows one to assess disability as a dynamic interaction between the person and the environment. The ICF can assist with generating evidence-based policy, research, programs, and services. To extend the use of the ICF within the United States, a variety of measurement tools and data systems must be examined in addition to further evaluation of the implications of the classification system for U.S. populations. To better serve consumers, NIDRR intends to support the development, evaluation, and improvement of the ICF as it applies to participation of individuals with disabilities in society and the environments, systems, and policies that have the potential to affect their lives.

Letters of Intent

To assist with selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RRTC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RRTC and a description of its research and development activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed RRTC staff including the Center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc. Submission of a LOI is a prerequisite for eligibility to submit an application.

The signed, original LOI, or with prior approval an email or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit email or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: David Keer, U.S. Department of Education, 400 Maryland Avenue, SW., room 3431, Switzer Building, Washington, DC 20202–2645. With prior approval, an email or facsimile copy of a LOI will be accepted by NIDRR as meeting the four-week deadline. However, in these cases, NIDRR must receive a signed original no later than one week after the date the e-mail or facsimile copy was sent. For further information regarding the LOI requirement, contact David Keer at (202) 205–5633 or by e-mail at: *david.keer@ed.gov.*

Proposed Priority

The Assistant Secretary proposes to fund one RRTC on disability demographics and statistics. The purpose of the RRTC is to support rigorous collaborative research to generate new knowledge that advances evidence-based decisionmaking to improve the lives of persons with disabilities. The references for this topic can be found in the Plan, Chapter 2, Dimensions of Disability: Age, Gender, Education, Income, and Geography; Chapter 7, Associated Disability Areas: Disabilty Statistics. The RRTC must:

(1) Conduct analyses using a variety of data sources, including those that assess facilitators and barriers to participation in society, to address the status and understanding of the population of individuals with disabilities;

(2) Identify, develop as necessary, and validate a series of best-practice

approaches that facilitate the selection of appropriate measures, ensure a high degree of power and representativeness of the sample, and apply techniques of interviewing and data collection that lead to high levels of quality and relevance of information while minimizing the burden on respondents;

(3) Identify, develop as necessary, and evaluate instruments, data sources, administrative records, or other sources that allow Federal policymakers to use the ICF classification system for evidence-based decisionmaking;

(4) Serve as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and others; and

(5) Develop quality standards to guide the identification of information for dissemination and conduct all activities to prepare, produce, and disseminate findings in a variety of media, such as web-based and print documents, meetings and conferences, and teleconferences that are targeted to the wide range of audiences who need such information.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;
- Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Disability Demographics and Statistics Center have been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a research, dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new RRTC that generates, disseminates, and promotes the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11623 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA21

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for one or more development projects under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call

the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for each topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Under the DRRP program, we define a development activity as the use of knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

Priorities—Development Projects for Stabilizing and Improving Lives of Persons With Disabilities

Background

On May 17, 2002, we published in the **Federal Register** (67 FR 35417–35419) a notice inviting written comments suggesting priorities for research centers and projects administered by NIDRR under title II of the Act. Individuals were encouraged to suggest research centers and projects consistent with the Plan and that support the NFI.

We received many suggestions. The purpose of this notice of proposed priorities is to present two development topics from public suggestions. These topics are for development activities under the DRRP program.

We propose priorities for development that will alleviate problems and challenges faced by people with disabilities as they seek improved life outcomes. These priorities share the goal of developing new materials, devices, systems, or methods to improve the inclusion and participation of individuals with disabilities in their families and communities. We propose two topics with the knowledge that we may not issue final priorities nor make awards in both areas.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed DRRP, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed DRRP and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed DRRP staff including the center Director and key

personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of a LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an e-mail or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit e-mail or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Donna Nangle at (202) 205–5880 or by e-mail at: *Donna.Nangle@ed.gov.*

Priorities

The Assistant Secretary proposes to fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of the priority, projects awarded under each of the topics, in consultation with the NIDRR project officer, must:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and development methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both in all aspects of development as well as in design of clinical services and dissemination activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Disseminate findings on products and technologies to appropriate audiences, including information on best practices, where applicable.

An applicant must propose development activities and dissemination of findings under one of the following topics:

(a) *Voting Access and Privacy.* This project must develop technologies, strategies, and approaches that can be used to improve and expand access, including physical accessibility, to voting accurately, independently, and privately for all citizens with disabilities. Voting is a citizen's most basic right. Yet many individuals with disabilities find it difficult, if not impossible, to vote without a poll worker's or another individual's assistance. Development products may address, but are not limited to, voting apparatus, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public elections officials and citizens, and cost analysis and evaluation of products and technologies to enhance voting access for citizens with disabilities. The reference for this topic can be found in the Plan, Chapter 5, Technology for Access and Function: Research to Improve Accessibility of Telecommunications and Information Technology.

(b) *Technologies for Families and Caregivers.* This project must develop technologies, strategies, and approaches that will facilitate and improve the continuum of activities and reduce the demands involved in care giving for individuals with disabilities. The upsurge of programs such as ''Long-Term Care'' and ''Home-Health Care'' has stimulated the need for tools and strategies that enable individuals with disabilities to live longer and more productively in their communities. New and improved technologies for care giving will help implement the *Supreme Court's Olmstead* v. *L.C.* decision. Development products may address, but are not limited to, evaluation and assessment of existing technology solutions, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public officials and citizens, and cost analysis and evaluation of products and technologies to enhance community integration, personal assistance services, and independent living for citizens with disabilities. The reference for this topic can be found in the Plan, Chapter 5, Technology for Access and Function: Assistive Technology for Individuals.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years that similar projects have been completed. These proposed priorities will generate new knowledge through development to focus on stabilizing and improving lives of persons with disabilities.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of new DRRP projects that generate, disseminate, and promote the use of new information that will improve the options for disable individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11624 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA25

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary proposes a priority for Research Infrastructure Capacity Building under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

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Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register.** we will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this proposed priority, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement may include one or more of the following (34 CFR 350.40(b)):

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

Priority

Background

This priority supports one DRRP on Research Infrastructure Capacity Building. This DRRP will improve the rehabilitation research infrastructure and rehabilitation services and outcomes for individuals with disabilities from minority populations. Minority population refers to specific race and ethnicity categories. The following race and ethnic categories are applicable for this priority: (1) American Indian or Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, and (5) Hispanic or Latino. Definitions and further information about race and ethnic categories is available in the Office of Management and Budget Directive 15 at *http://www.whitehouse.gov/OMB/fedreg/ombdir15.html.*

Minority populations are among the fastest growing racial and ethnic groups in the United States. The U.S. Census Bureau predicts that the American Indian, Asian and Pacific Islander, Black, and Hispanic population will increase to 40 percent of the U.S. population by 2010 and 50 percent by 2050. Additionally, more than 32 million individuals in the U.S. speak a language other than English (latest figures available from the U.S. Census Bureau). Currently, about 10.4 percent of the U.S. population is foreign-born; by the year 2050, this figure is likely to rise to approximately 13.3 percent (U.S. Census Bureau, 2000).

Historically, disability disproportionately affects minority racial and ethnic populations. The changing demographic profile of the U.S. will potentially increase the demand for a disability and rehabilitation community that is better prepared to address the needs of a more ethnically, racially, culturally, and linguistically diverse population.

Language barriers and lack of understanding about cultural values and beliefs are challenges that may impact access to services, rehabilitation outcomes, and research activities. Additionally, traditional theories and methodologies may ignore the unique characteristics and needs of minority populations and be ineffective for conducting research activities, disseminating research findings, and fostering the participation of minority racial and ethnic populations in research activities. Research activities are often challenged by methodological issues, particularly questions about the use of specific research approaches within certain cultural contexts.

NIDRR is interested in funding activities focused on high quality research that will assist with further development of the research infrastructure, particularly activities that expand research approaches for scientific inquiry of relevant variables to improve understanding of the needs of minority populations, including issues of race, ethnicity, and cultural context; improve our understanding about rehabilitation outcomes, and the disparate rate of disability in minority racial and ethnic populations; and assist with development of innovative methods for establishing collaborative research partnerships.

Proposed Priority—Research Infrastructure Capacity Building

The Assistant Secretary proposes to fund one DRRP that will focus on a research, development, and dissemination project on Research Infrastructure Capacity Building. The reference for this topic can be found in the Plan, Chapter 9, Capacity Building: Priorities in Capacity Building. In carrying out this purpose the DRRP must:

(1) Develop and evaluate an innovative method(s) for establishing long-term collaborative research partnerships, with an emphasis on relationships between minority entities, Indian tribes, and nonminority entities;

(2) Research, develop, and evaluate strategies to assess the efficacy of existing research theories, methodologies, and measures for studying and describing underrepresented individuals with disabilities from minority racial and ethnic populations and their needs;

(3) Research, identify and modify or develop, and evaluate scientifically valid measurement strategies and methodologies for research involving the study of underrepresented minority racial and ethnic populations; determine their efficacy; and examine the implications of introducing newly developed approaches designed specifically for the study of this population;

(4) Develop and evaluate research principles or standards for culturally appropriate and linguistically competent disability and rehabilitation research, and disseminate guidelines; and

(5) Develop, implement, and evaluate approaches for disseminating research findings, information about best practices for research involving underrepresented minority race and ethnic populations, and information about research collaboration.

In carrying out the purposes of the priority, the DRRP must:

- In the first three months of the grant, develop and implement a research partnership plan ensuring that all activities are predominantly focused on research infrastructure capacity building and provide for mutual benefit for each member of the partnership, including persons with disabilities or their representatives;
- In the first year of the grant, implement a plan to disseminate research results;
- In the third year of the grant, conduct a state-of-the-science conference focused on the funded area of research and related topics;
- In the fourth year of the grant, publish and disseminate a comprehensive report on the outcomes and proceedings of the conference;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Conduct ongoing program evaluation and produce a closing report describing research outcomes, as they relate to the research goals and objectives, and future directions for research infrastructure development and capacity building.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the research infrastructure capacity building projects have been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new DRRP projects that generates, disseminates, and promotes the use of new information that will improve the options for disable individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11625 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820–ZA23

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for up to seven awards under the Rehabilitation Research and Training Centers (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities for competition in fiscal year (FY) 2003 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

These proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive

and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

We may make awards for up to 60 months to institutions of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as recipients of research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Background

The following categories represent areas of NIDRR interest based on prior investment, recommendations from constituencies, and opportunities for continued advancement in rehabilitation treatment and support of community integration efforts. Basic incidence and prevalence data are provided for each of the proposed Health and Function RRTCs.

There are increasing numbers of individuals aging with disability in the United States. As reported in Chapter Six of Healthy People 2010, from 1990 to 1994, disability rates increased in youth under the age of 18 as well as in the age group between 18 and 44. Advances in medical science, technology, rehabilitation treatment, public health, and consumer education have resulted in increased life expectancies for individuals with significant physical disabilities. In addition, the absolute number of persons aged 65 or older living with disabilities also increased.

There are approximately 10,000 new cases of spinal cord injury (SCI) each year; the prevalence of SCI is estimated to be between 183,000 and 230,000. Although medical advances have improved the probability of surviving SCI, the life expectancy of individuals with SCI is lower than that of the general population. People living with SCI continue to be at higher risk than the general population for secondary disabilities such as pressure ulcers, respiratory complications, urinary tract infections (UTIs), pain, depression, and obesity.

An estimated 5.3 million Americans currently live with disabilities resulting from traumatic brain injury (TBI). The Centers for Disease Control (CDC) estimate that approximately 80,000 Americans experience the onset of disabilities resulting from TBI each year. As stated in the 1998 National Institute of Health (NIH) Consensus Conference Proceedings, ''TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning.'' Among children up to age 14, TBI results annually in an estimated 3,000 deaths, 29,000 hospitalizations, and 400,000 emergency department visits. The long-term consequences of these occurrences are not well documented. A working group convened by the National Center for Injury Prevention and Control at the CDC in October, 2000, called for more research on patterns of recovery, secondary conditions, effectiveness of treatment, and issues of measurement for this population.

Neuromuscular diseases affect approximately 400,000 children and adults in the U.S. Neuromuscular disease is a classification category that describes diseases of the peripheral neuromuscular system, both acquired and hereditary. This category encompasses diseases such as amyotrophic lateral sclerosis, post-polio, Guillan-Barre, muscular dystrophy, myasthenia gravis, and other muscular atrophies and myopathies. Conditions associated with these disorders include progressive weakness, limb contractures, spine deformity, and impaired pulmonary function.

New or recurrent stroke affects approximately 600,000 people each year in the U.S., the majority of whom (72 percent) are 65 or older. Approximately 84 percent of these events are first attacks, while the remaining 16 percent are recurrent episodes. Stroke is the leading diagnosis for individuals treated in medical rehabilitation facilities in the U.S. In addition, there are approximately 4.4 million stroke survivors living in the U.S.

Arthritis affects approximately 43 million Americans, which is about 1 of every 6 people, making it one of the most common disease groups in the U.S. In addition, as the U.S. population ages, the number of Americans with arthritis is expected to increase to 60 million persons by 2020. Arthritis is also the leading cause of disability among adults in America, with more than 7 million persons in our population reporting daily limitations in their activities due to arthritis.

Approximately 300,000 individuals in the U.S. have multiple sclerosis (MS), an autoimmune disease that affects the central nervous system when the white matter protecting the nerve fibers is

damaged. The age of onset peaks between 20 and 30 years. Almost 70 percent of persons exhibit symptoms between the ages of 21 and 40. The life expectancy of persons with MS is essentially normal; however, there may be progressive or recurring and relapsing incidences of symptoms and disability over the life course. Recent pharmacological treatments reduce the progression or frequency of attacks of the symptoms for some people with MS, and other treatments are effective for some manifestations of the disease.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RRTC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RRTC and a description of its research and development activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed RRTC staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of a LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an email or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit email or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Ruth Brannon, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Ruth Brannon at (202) 358–2971 or by e-mail at: *ruth.brannon@ed.gov.*

Proposed Priorities

The Assistant Secretary proposes to fund up to seven RRTCs that will focus on rehabilitation to improve the health and function of persons with disabilities and thus to improve their ability to live in the community. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers/family members, practitioners, service providers, researchers, and policymakers;

(3) Provide technical assistance, as appropriate, to critical stakeholders, (*e.g.*, consumers/family members, practitioners, and service providers) to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds; and
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priority topic areas:

(a) *Psycho-social Factors Affecting Individuals Aging with Disability:* This Center must conduct research and training activities that generate new knowledge regarding the psycho-social issues that affect individuals aging with disabilities and the sources of resilience used by this population to cope with or respond to these issues. In an effort to improve long-term outcomes for these individuals, the Center is encouraged to identify or develop and test the effectiveness of interventions that will prevent or minimize the impact of psycho-social issues on the health, activity, and community participation of individuals with disabilities across the life span and promote positive adjustment and improved quality of life. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Aging with a Disability.

(b) *Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury (SCI):* In an effort to improve the general health, well-being, and community integration of individuals with SCI, this Center must conduct research and training activities to enhance knowledge regarding treatment or prevention strategies or both that address the wide array of secondary conditions associated with SCI, including, but not limited to, respiratory complications, urinary tract infections, pressure ulcers, pain, obesity, and depression. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Secondary Conditions.

(c) *Community Integration of Individuals With Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging community integration needs of individuals with TBI, including but not limited to mild TBI. The Center should consider the impact of secondary conditions on community integration outcomes as well as the role of assistive devices and other technology. In addition, this Center must develop and evaluate a comprehensive plan to facilitate the translation of new knowledge into rehabilitation practice and the delivery of community-based services. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Aging with a Disability.

(d) *Rehabilitation of Individuals with Neuromuscular Diseases:* This Center must conduct research that addresses rehabilitation needs, particularly related to exercise, nutrition, and pain, of individuals with neuromuscular diseases. In doing this, the Center must identify or develop and evaluate health promotion and wellness programs to enhance recreational opportunities for individuals with neuromuscular

diseases. This Center must identify, develop as appropriate, and evaluate devices and other technology that improve employment and community integration outcomes for this population of individuals with disabilities. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(e) *Rehabilitation of Stroke Survivors:* This Center must conduct research to develop rehabilitation interventions that improve rehabilitation, employment, and community integration outcomes of stroke survivors, including young stroke survivors. Such interventions may include robotics, complementary alternative therapies, and universal design methodologies aimed at improving the utility of workplace tools and devices. This Center must explore the cost-effectiveness of stroke rehabilitation treatments, such as group model approaches. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Trauma Rehabilitation.

(f) *Rehabilitation of Individuals with Arthritis:* This Center must address national goals to reduce pain and disability, improve physical fitness and quality of life, and promote independent living and community integration for persons with arthritis of all ages in the United States. This Center must research the benefits of exercise and physical fitness; home and community-based self-management programs; and technologies available to the broad populations of persons with arthritis in the environments where they live, learn, work, and play. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(g) *Rehabilitation of Children with Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging rehabilitation needs for children and adolescents with TBI. In doing this, the Center must document patterns of recovery, determining the effectiveness of current outcome measures for this population. Of particular interest will be evaluation of interventions and technologies, including specialized support services, to assist families and caregivers with transition to the school and the community. This RRTC must identify or develop effective rehabilitation strategies to improve outcomes for children and adolescents with TBI at all stages of rehabilitation. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Trauma Rehabilitation.

(h) *Rehabilitation of Individuals with Multiple Sclerosis (MS):* This Center must conduct research to maximize the participation of people with MS, including those with all levels of symptoms associated with the disease, at home, in the community, and while working or learning. In doing so, the Center must identify, develop as necessary, and evaluate interventions to enhance the independence of people with MS. Those interventions must include strategies and programs that address interactions between cognitive, psychosocial, sensory, mobility, and other manifestations of the disease across the lifespan. The Center must consider the role of assistive and universally designed technologies, strategic goals, and financial planning for persons with MS, and the role of caregivers throughout the disease course. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Rehabilitation Research and Training Center Program have been well established over the years in that similar projects have been completed. These proposed priorities will generate new knowledge through a research, dissemination, utilization, training, and technical assistance projects.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of a new RRTCs that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11626 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA17

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for one or more research projects under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these

priorities for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

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SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*.

The proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for each topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Under the DRRP program, we define a research project as basic or applied (34 CFR 350.5). Research is classified on a continuum from basic to applied:

(1) Basic research is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) Applied research is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

In carrying out a research activity under this program (34 CFR 350.13), a grantee must:

(a) Identify one or more hypotheses; and

(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—

(1) New or full scientific knowledge; or

(2) Understanding of the subject or problem studied.

Priorities

Research Projects for Stabilizing and Improving Lives of Persons with Disabilities

Background

On May 17, 2002, we published in the **Federal Register** (67 FR 35417–35419) a notice inviting written comments suggesting priorities for research centers and projects administered by NIDRR under title II of the Act. Individuals were encouraged to suggest research priorities consistent with the Plan and that support the NFI.

We received many suggestions. The purpose of this notice of proposed priorities is to present multiple research topics from public suggestions as well as related topics from staff analysis of emerging disability needs. All topics are for research activities under the DRRP program.

We propose priorities for applied research that will alleviate problems and challenges faced by people with disabilities as they seek improved life outcomes. These priorities share the goal of developing new knowledge to improve the inclusion and participation of individuals with disabilities in their families, school, or work. Although we are proposing multiple priorities, we may not issue final priorities or make awards in all areas.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed DRRP, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed DRRP and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed DRRP staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of a LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an email or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit email or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the email or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Donna Nangle at (202) 205–5880 or by email at: *Donna.Nangle@ed.gov.*

Priorities

The Assistant Secretary proposes to fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of these priorities, projects awarded under each of the topics must, in consultation with the NIDRR project officer:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training and research methodologies, and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both in all aspects of the research as well as in design of clinical services and dissemination activities;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policymaking, program administration, and delivery of services to individuals with disabilities; and
- Disseminate findings to appropriate audiences, including information on best practices, where applicable.

An applicant must propose research activities and dissemination of findings under one of the following topics:

(a) *Self-Determination in Transition to Adulthood for Youth with Disabilities:* This project must conduct research and disseminate information about factors that enhance and promote self-determination for youth with disabilities who are transitioning into adulthood. The project may include research on interventions that (1) enable successful transition to life activities such as independent living, higher education, and employment; and (2) improve functional outcomes such as enhanced memory, learning, visual perception, auditory reception, literacy, and self-advocacy. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Transition from School to Work.

(b) *Examining Violence Against People With Disabilities:* This project must conduct research and disseminate information on violence against persons with disabilities. Activities may include research on statistics related to criminal victimization of people with disabilities compiled under the 1998 Crime Victims with Disabilities Awareness Act (Pub. L. 301–105); study of data from enhanced crime incident reports; and analysis of data and research findings on the impact of violence on specific populations such as, but not limited to, individuals with cognitive or intellectual disabilities, women with disabilities, individuals with sensory disabilities, and individuals with mobility disabilities. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

(c) *Family and Cultural Aspects of Independent Living:* This project must conduct research and disseminate information on how individuals with disabilities draw upon their families (or those with whom they share living arrangements) to obtain necessary supports such as economic assistance, informal and formal care giving, and emotional nurturing. Activities may include: (1) Identifying factors that help or hinder NFI goals regarding educational attainment, home ownership, and full access in community life; (2) research on ways that family and shared-community living arrangements may facilitate independence and help implement the Supreme Court's *Olmstead* v. *L.C.* ruling; and (3) research on how family and shared-community living arrangements may facilitate meeting the objectives for people with disabilities in Healthy People 2010. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living and chapter 6, Research on Social Roles.

(d) *Older Women and Falls:* This project must identify and compare outcomes-oriented rehabilitation interventions for older women to overcome the disabilities and secondary conditions associated with falls and to prevent secondary falls and other complications. The project must examine risk factors for falls (*e.g.*, age, disability, medications use, health, functional ability, environmental hazards). The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability and chapter 4, Health and Function: Research on

Trauma Rehabilitation; Research on Aging.

(e) *Issues in Asset Accumulation and Tax Policy for People with Disabilities:* This project must conduct research on fiscal and social environmental barriers to economic empowerment and self-sufficiency for people with disabilities and the impact of legislation designed to promote economic self-sufficiency and facilitate community integration. The project must conduct systematic analysis of the relationship between tax policy and asset accumulation for individuals with disabilities and improved economic and community integration outcomes. This includes testing the impact of asset accumulation on economic improvements and community integration for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

(f) *Identifying Opportunities and Barriers to Entrepreneurship for People with Disabilities:* This project must conduct research on ways to improve employment outcomes of individuals with disabilities through self-employment and entrepreneurial strategies and how to train both people with disabilities and counselors in successful use of these strategies. The research must include analysis of the effects of policies and practices of the vocational rehabilitation system; related programs such as those of the Small Business Administration; and other public, private, or nonprofit employment organizations on self-employment options for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years that similar projects have been completed. These proposed priorities will generate new knowledge through research to focus on stabilizing and improving lives of persons with disabilities.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of new DRRP projects that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11627 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA19

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Technical Assistance Resource Center on Parenting with a Disability under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while

preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this proposed priority, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Priority

Background

This DRRP will provide expertise or information to assist people who have disabilities to fulfill their roles as parents. Dissemination is the systematic distribution of information or knowledge through a variety of ways to potential users or beneficiaries. Utilization relates research findings to practical applications in planning, policymaking, program administration, and delivery of services to individuals with disabilities.

NIDRR research addresses many aspects of parenting with a disability. NIDRR projects develop and evaluate assistive devices for use in child care; analyze employment and health care benefits and options to enhance families; assess the impact of public and private policies on parents with a disability; and investigate models of home-based care and positive family roles as community integration strategies. The resource center may provide information and technical assistance on custody, prenatal and neonatal, adoption, adaptive parenting equipment, and general parenting information. Information and technical assistance will assist individuals with a wide range of disabilities including, but not limited to, parents with physical, vision, hearing, intellectual, and behavioral disabilities.

In addition to parents with disabilities and their families, individuals in need of information about parenting with a disability may include advocates and personal care providers (especially those working in independent living); legal, social service, and medical professionals; rehabilitation personnel; teachers and school administrators; librarians and information specialists; and members of the media.

Proposed Priority—Resource and Technical Assistance Center on Parenting with a Disability

The Assistant Secretary proposes to fund one DRRP that will focus a dissemination, utilization, training, and technical assistance project to be a ''Resource and Technical Assistance Center on Parenting with a Disability.'' The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living and chapter 8, Knowledge Dissemination and Utilization: Overview. The DRRP must:

(1) Develop quality standards to guide the identification of information for dissemination;

(2) Provide information and technical assistance to people with disabilities who are or wish to be parents. A variety of methods and tools will be developed to provide information and technical assistance. Tools might include such items as: Catalogues and listings of assistive technology, fact sheets, and articles for publication in various media. Methods to reach interested parties might include: interactive features of the Internet, wide area telephone service, presentations at

meetings or conferences and personal visits;

(3) Develop parent-to-parent support methods, including approaches for sharing of information about ''best practices'' in parenting with a disability;

(4) Train parents, potential parents, service providers and others on issues relating to parenting with a disability and the research, information and services available to them; and

(5) Evaluate project technical assistance and information dissemination activities.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other projects sponsored by OSERS, academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Using information developed from the project's dissemination, training, and technical assistance activities, with emphasis on materials from NIDRR projects, provide materials, consultation, technical assistance, and related capacity-building activities to NIDRR grantees on how to assist parents with disabilities.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Resource and Technical Assistance Center on Parenting with a Disability has been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new DRRP projects that generates, disseminates, and promotes the use of new information that will improve the options for disable individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11628 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding priorities under the Rehabilitation Research and Training Centers (RRTC) Program for up to four awards for the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Year (FY) 2003 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

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Rehabilitation Research and Training Centers

We may make awards for up to 60 months to institutions of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as recipients or research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Background

Community integration (CI) and independent living (IL) are at the heart of NIDRR's mission, which is to develop knowledge that will ''improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens.'' The Plan, which articulates this mission, emphasizes that community integration is not just about being located physically in the community; it is about full participation, independence, empowerment, choice, and control.

CI and IL are critical components of the new model of disability set forth in the Plan. This model maintains that disability is a product of an interaction between individual characteristics and the characteristics of the natural, built, cultural, and social environments. It incorporates a civil-rights model of disability.

NIDRR's focus on CI follows the stated purpose of IL programs under the Rehabilitation Act. That purpose is ''to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self help, self determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society.''

The urgent need for CI of individuals with disabilities was made clear during Congressional passage of the Americans with Disabilities Act (ADA). Witnesses testified that when they tried to participate in community life, they experienced exclusion, derision, and a host of architectural, communication, and transportation barriers (S. Report 101–116, Committee on Labor and Human Resources report on S. 933, 101st Congress, 1989).

While great strides have been made since the passage of the ADA in 1990, much more remains to be done. In general, people with disabilities continue to live outside the mainstream of American life. They remain unnecessarily institutionalized. They have lower rates of participation in community life. They have lower educational levels and higher unemployment levels and poverty rates.

The 2000 National Organization on Disability/Lou Harris Survey on Community Integration found that 40 percent of people with severe disabilities are not at all involved in their communities; this is almost double the percentage as people without disabilities.

The NFI expands research on and access to assistive technology (AT); promotes education, homeownership, and employment opportunities for people with disabilities; and emphasizes swift implementation of the ADA and the U.S. Supreme Court's *Olmstead* decision. The *Olmstead* decision holds that title II of the ADA prohibits unjustified isolation or segregation of qualified individuals with disabilities through institutionalization. The President further issued Executive Order 13217, ''Community-Based Alternatives for Individuals with Disabilities,'' which requires Federal agencies to implement *Olmstead*.

In order to further the goals of CI and IL, NIDRR intends to fund up to four community integration-related RRTCs.

Applicants must select from the following topic areas: (a) Community Integration for Individuals with Intellectual and Developmental Disabilities; (b) Promoting Healthy Aging and Community Inclusion Among Adults with Intellectual and Developmental Disabilities; (c) Positive Behavioral Support in Community Settings; (d) Policies Affecting Families of Children with Disabilities; (e) Community Integration for People with Psychiatric Disabilities; and (f) Community-Based Substance Abuse Rehabilitation for Individuals with Disabilities.

For purposes of this priority, the definition of ''Intellectual Disability'' follows that of the American Association of Mental Retardation (AAMR). A person with an intellectual disability, as defined by the AMMR, must have:

(1) A significantly sub-average general IQ. The AAMR defines this as an IQ of 70 or less on a standard measure of intelligence;

(2) Limitations in two or more of the following adaptive skills: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, and leisure and work; and

(3) Acquired their condition before 18 years old.

For purposes of this priority, the definition of ''Developmental Disability'' follows the Developmental Disabilities from the Developmental Disabilities Assistance and Bill of Rights Act. The term developmental disability means a severe, chronic disability of an individual that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in 3 or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; economic self-sufficiency; and

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RRTC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RRTC and a description of its research and development activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed RRTC staff including the Center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

The signed, original LOI, or with prior approval an e-mail or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit e-mail or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Ruth Brannon, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Ruth Brannon at (202) 358–2971 or by e-mail at: *ruth.brannon@ed.gov*.

Proposed Priorities

The Assistant Secretary proposes to fund up to four RRTCs that will focus on improving the community integration outcomes of persons with disabilities. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers and their family members, practitioners, service providers, researchers, and policymakers;

(3) Provide technical assistance to critical stakeholders, as appropriate, *e.g.*, consumers and their family members, practitioners, and service providers, to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;

• Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and

• Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priorities.

(a) *Community Integration for Individuals with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct qualitative and quantitative research, including the development and implementation of outcome measures, on factors that assist and hinder community integration, self-determination, training, employment, and independent living for persons with I/DD. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(b) *Promoting Healthy Aging and Community Inclusion Among Adults with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct epidemiological and community-based research, training, and dissemination activities regarding factors, such as aging, healthcare utilization, and caregiver characteristics, that assist and hinder community integration for adults with intellectual and developmental disabilities. The references for this topic can be found in the Plan, chapter 4, Health and Function: Research on Aging with a Disability; and chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(c) *Positive Behavioral Support in Community Settings:* This Center must conduct research, training, and dissemination activities on positive behavioral support interventions that assist and sustain community integration efforts for a broad range of individuals with disabilities, including people with mental illness, over time and across systems. Dissemination and training efforts must target community partners, *e.g.*, employers, teachers and coaches, and landlords, as well as individuals with disabilities and their families. The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Research on Increasing Personal Development and Adaptation.

(d) *Policies Affecting Families of Children with Disabilities:* This Center must research and disseminate information on the effects of government, system, network, and agency policies on community integration and quality of life for families who have children with disabilities. The Center also must validate instruments to measure these effects and provide technical assistance, with the goal of improving community integration and quality of life, by: (a) enhancing and coordinating policies between systems and (b) informing and empowering family and peer-based networks and partnerships. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Employment and Independent Living; and chapter 6, Research on Social Roles.

(e) *Community Integration for People with Psychiatric Disabilities:* This Center must research, disseminate, and provide training on factors, policies, and interventions, such as peer-support models and other innovative treatment approaches, that assist community integration for people with psychiatric disabilities. The target population may include individuals from any age group. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(f) *Substance Abuse:* This Center must conduct research, disseminate information, and provide training on community-based interventions, partnerships, and service delivery models that improve community integration outcomes for people with disabilities who are recovering from substance abuse problems. The target population may or may not include individuals with co-occurring disorders such as mental illness. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Rehabilitation Research and Training Center Program have been well established over the years in that similar projects have been completed. These proposed priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program.)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11629 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed April 28, 2003 through May 2, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030193, Draft EIS, AFS, CA, Spalding Land Exchange Project, Proposed Land Exchange between Spalding Community Service District (SCSD) and Lassen National Forest (LNF), Special Use Permit, Lassen County, CA, Comment Period Ends: June 23, 2003, Contact: Lois Charlton (530) 257–2151.

EIS No. 030194, Draft EIS, AFS, SD, Sioux Ranger District Oil and Gas Leasing Project, Implementation, Sioux Ranger District, Custer National Forest, Harding County, SD, *Comment Period Ends:* July 8, 2003, Contact: Laurie Waters-Clark (605) 707–4432. The U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Bureau of Land Management are Joint Lead Agencies on the above project. This document is available on the Internet at: *http://(www.fs.fed.us/r1/custer/*.

EIS No. 030195, Final Supplement, COE, TX, Dallas Floodway Extension, Flood Damage Reduction and Environmental Restoration, Implementation, Trinity River Basin, Dallas County, TX, *Wait Period Ends:* June 9, 2003, *Contact:* Gene T. Rice, Jr. (817) 886–1374.

EIS No. 030196, Draft EIS, AFS, MN, Chippewa and Superior National Forests Land and Resource Management Plans Revision, Implementation, Beltrami, Cass, Itasca, Cook, Lake and St. Louis Counties, MN, *Comment Period Ends:* August 6, 2003, *Contact:* Duane Lula (218) 626–4300. This document is available on the Internet at: *http://www.fs.fed.us/r9/chippewa/plan/planning.htm.*

EIS No. 030197, Final EIS, FHW, MI, US–31 Petoskey Area Improvement Study, Congestion Reduction on US–31 in the City of Petoskey and Resport and Bear Creek Townships, Funding and US Army COE Section 404 Permit Issuance, Emmet County, MI, *Wait Period Ends:* June 9, 2003, *Contact:* James A. Kirschensteiner (517) 702–1835.

EIS No. 030198, Draft EIS, AFS, NV, Jarbidge Canyon Project, To Implement a Road Management Plan and Construct a Water Projects along the Charleston-Jarbidge Road, and Reconstruct the South Canyon Road, Humbolt-Toiyabe National Forest, Jarbidge Ranger District, ELko County, NV. *Comment Period Ends:* June 23, 2003, *Contact:* Jim Winfrey (778) 778–0229.

EIS No. 030199, Final EIS, COE, TX, Three Oaks Mine Project, Construction and Operation of a Surface Lignite Mine, U.S. Army COE Section 404 Permit Issuance, Lee and Bastrop Counties, TX, *Wait Period Ends:* June 23, 2003, *Contact:* Jennifer Walker (817) 886–1733.

EIS No. 030200, Draft EIS, DOD, Programmatic EIS—Chemical and Biological Defense Program, To Protect our Soldiers, Sailors, Marines and Airmen on the Battlefield, United States and other Countries, *Comment Period Ends:* June 23, 2003, *Contact:* Jolane Souris (301) 619–2004.

EIS No. 030201, Final EIS, USN, CA, Advanced Amphibious Assault Vehicle (AAAV) Development, Replacement and Establishment, Implementation, Del Mar Basin Area of Marine Base Corps (MCB) Camp Pendelton, San Diego County, CA, *Wait Period Ends:* June 9, 2003, *Contact:* Lisa Seneca (619) 532–4744.

EIS No. 030202, Final EIS, DOE, AZ, ID, NV, OR, WY, CA, MT, NM, UT, Fish and Wildlife Implementation Plan, To Implement and Fund a Policy Directions for Fish and Wildlife Mitigation and Recovery, Pacific Northwest, AZ, CA, ID, MT, NV, NM, OR, UT, WY and British Columbia, *Wait Period Ends:* June 9, 2003, *Contact:* Charles Alton (503) 230–5878.

EIS No. 030203, Final EIS, AFS, AK, Cholmondeley Timber Sales, Implementation, Harvesting Timber, Tongass Forest Plan, Tongass National Forest, Craig Ranger District, West of Ketchikan and South of Prince of Wales Island, AK, *Wait Period Ends:* June 9, 2003, *Contact:* Dale Kanen (907) 826–3211.

EIS No. 030204, Draft EIS, STB, TX, Bayport Loop Rail Line Project, Construction and Operation, between Bayport Loop and the former Galveston, Houston, Henderson Railroad Rail Line, Houston, Harris County, TX, *Comment Period Ends:* June 23, 2003, *Contact:* Dana White (888) 229–7857. This document is available on the Internet at: *http://www.stb.dot.gov.*

EIS No. 030205, Final EIS, NPS, FL, Biscayne National Park General Management Plan Amendment, Evaluation of the Effects of Several Alternatives for the Long-Term Management Plan, Stillsville, Biscayne National Park, Homestead, Miami-Dade County, FL, *Wait Period Ends:* June 9, 2003, *Contact:* Linda Canzanell (305) 230–1144.

EIS No. 030206, Draft EIS, NOA, LA, Programmatic EIS—The Louisiana Regional Restoration Planning Program, To Establish and Implement Natural Resource Trust Mandates, LA, *Comment Period Ends:* July 9, 2003, *Contact:* William Conner (301) 713–3038 Ext 190. This document is available on the Internet at: *http://www.darp.noaa.gov/.*

EIS No. 030208, Final EIS, AFS, ID, Golden Hand No. 3 and No. 4 Lode Mining Claims Plan of Operations Approval, Implementation, Frank Church-River of No Return (FC-RONR) Wilderness, Payette National Forest, Krassel Ranger District, Valley County, ID, *Wait Period Ends:* June 9, 2003, *Contact:* Quinn Carver (208) 634–0600. This document is available on the Internet at: *http://www.fs/fed/us/r4/payette/main.htm/.*

Dated: May 6, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–11632 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the

Federal Register dated April 01, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–E65038–FL Rating LO, USDA Forest Service and State of Florida Land Exchange Project, Assembled Exchange of both Fee, Ownership Parcels and Partial Interest Parcels, Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Osceola, Santa Rosa and Sumter Counties, FL.

Summary: EPA supports the proposed objectives of land consolidation and has identified opportunities to improve upon the proposed action through additional mitigative commitments involving Tribal interests.

ERP No. D–AFS–F65039–WI Rating EC2, McCaslin Project, Vegetation Management Activities Consistent with Direction in the Nicolet Forest Plan, Lakewood/Laona District, Chequamegon-Nicolet National Forest, Oconto and Forest Counties, WI.

Summary: EPA expressed environmental concerns relating to adverse impacts from roads to water quality and habitat and forest fragmentation of wildlife. The final EIS should update the predicted percent decline from the preferred alternative on the Golden-Winged Warbler, a management indicator species.

ERP No. D–AFS–L65408–ID Rating EC2, Salmon-Challis National Forest Noxious Weed Management Program, Integrated Series of Weed Treatment and Non-Treatment Practices, Implementation, Custer, Lemhi, Butte and Blaine Counties, ID.

Summary: EPA expressed environmental concerns with the range of alternatives evaluated in detail and the continued reliance on strategies that focus on treatment of invasive weed species instead of strategies designed to prevent the spread of noxious weeds. EPA recommended that the final EIS further evaluate approaches to reduce the spread of invasive weeds and assess the environmental effects of using herbicides, grazing treatment options and effects of multi-chemical applications.

ERP No. D–AFS–L65416–ID Rating NS, Upper Bear Timber Sale Project, Fuel Reduction, Forest Vegetation and Roads Management, Payette National Forest, Council Ranger District, Adams County, ID.

Summary: Region 10 used a screening tool to conduct a limited review of this action. Based on this screen, EPA does not foresee having any environmental objections to the proposed project and will not be conducting a detailed review.

ERP No. D–AFS–L67042–OR Rating EO2, Steamboat Mountain Mining Operations, Surface Quarry or ''Open Pit'' Mineral Extraction, Plan-of-Operation Approval, Appelgate Adaptive Management Area, Rogue River National Forest, Applegate Ranger District, Jackson County, OR.

Summary: EPA expressed environmental objections with potential adverse impacts to water quality and aquatic resources. Existing mineral pyrite deposits pose a high risk for Acid Rock Drainage. Cumulative impacts from milling activities have not been well characterized. EPA recommends that the final EIS identify the location and potential impacts of secondary and tertiary milling processing, characterize bedrock and waste rock acid generating potential, and include a plan to prevent erosion at the mine site and along transport roads.

ERP No. D–AFS–L67044–ID Rating EC2, Golden Hand No. 3 and No. 4 Lode Mining Claims Plan of Operations Approval, Implementation, Frank Church-River of No Return (FC–RONR) Wilderness, Payette National Forest, Krassel Ranger District, Valley County, ID.

Summary: EPA expressed environmental concerns with potential environmental impacts to water quality, salmonids and wilderness resources. The final EIS should discuss connected actions and potential impacts associated with tailings disposal, further characterize and describe the use of waste rock, disclose post-mining land use objectives and implementation, provide a cost estimate for meeting post-closure objectives, predict compliance with water quality standards and include quality assurance protocols.

ERP No. D–BLM–J01079–WY Rating EC2, South Powder River Basin Coal Project, Application for Leasing of Five Federal Coal Tracts: NARO Tracts: NARO North and NARO South (North Antelope/Rochelle Mine Complex), Little Thunder (Black Thunder Mine), West Roundup (North Rochelle Mine), and West Antelope (Antelope Mine), Campbell and Converse Counties, WY.

Summary: EPA expressed environmental concerns about potential adverse impacts to air quality from fugitive dust and nitrogen oxides. In addition, EPA has concerns about the cumulative impact assessment, impacts to wetlands and sage grouse habitat.

ERP No. D–FHW–J40158–MT Rating EC2, I–15 Corridor Project, Transportation Improvements from Montana City to the Lincoln Road Interchange, Funding and U.S. Army COE Section 404 Permit Issuance, Jefferson and Lewis & Clark Counties, MT.

Summary: EPA expressed environmental concerns regarding direct and indirect environmental impacts. EPA recommends the development of a detailed wetland mitigation plan, and consultation with the MDEQ to assure concurrence on proposed transportation improvements with TMDL development for Tenmile Creek and Silver Creek. Information is needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–FRC–K05058–CA Rating EC2, EL Dorado Hydroelectric Project, Application for a New License, South Fork of the American River Basin and Truckee River Basin (FERC NO. 184–065), EL Dorado National Forest, Lake Tahoe Basin Management Unit, Alpine, Amador and El Dorado Counties, CA.

Summary: EPA expressed environmental concerns and requested additional information regarding impacts to threatened and endangered species and Tribal resources.

ERP No. D–JUS–G81011–TX Rating LO, Rio Grande Operation Project, Reduction or Elimination of Illegal Drug Activities and Illegal Immigrants, Starr, Hidalgo and Cameron Counties, TX.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. D–JUS–K81028–CA Rating LO, Juvenile Justice Facility and East County Hall of Justice Development, Potential Construction of Both Projects on the Same Site or on Separate Sites, Alameda County, CA.

Summary: EPA had no objections to this project but recommended that the Federally preferred alternative be identified in the Final EIS.

ERP No. D–JUS–K99031–AZ Rating EO2, Programmatic EIS—US Border Patrol Activities within Border Areas of the Tucson and Yuma Sectors to Gain, Maintain, and Extend Control of the Border to Prevent Unlawful Entry of Persons into the US, Cochise, Santa Cruz, Pima and Yuma Counties, AZ.

Summary: EPA expressed environmental objections to the preferred alternative based on the project's significant environmental degradation of cultural/tribal resources, wetlands and water quality, wildlife habitat, endangered species, ecologically or historically unique areas and air quality, that should be corrected by project modification or implementation of other feasible alternatives. EPA also expressed concerns about potential impacts to human health and safety and transboundary environmental effects.

ERP No. D–NPS–F65038–OH Rating EC2, Cuyahoga Valley National Park

Rural Landscape Management Program, Rural Landscape Resources Preservation and Protection, Cuyahoga River, Cuyahoga and Summit Counties, OH.

Summary: EPA expressed environmental concerns regarding potential deer over grazing which damage native plant communities, herd health and the lack of invasive species control measures.

ERP No. DS–AFS–J65334–MT Rating EC2, Keystone-Quartz Ecosystem Management Plan, Implementation, Updated Information on Alternatives, Beaverhead-Deerlodge National Forest, Wise River Ranger District, Beaverhead County, MT.

Summary: While EPA supports the preferred alternative EPA expressed environmental concerns with recommended soil protection measures and recommends restoration and upgrading of existing low standard roads which can impact water quality.

ERP No. DS–AFS–J65353–MT Rating EC2, Threemile Stewardship Project, Additional Information concerning the Potential Effects on the Goshawk Habitat, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT.

Summary: EPA does not object to the preferred alternative to harvest and thin timber, use prescribed fire and manage road systems. EPA did express environmental concerns with the disclosure project effects on Goshawk nest territories and implementation via stewardship contracting to adequately address environmental and ecological concerns.

ERP No. DS–FHW–E40183–FL Rating EC2, FL–23 Extension (Branan Field-Chaffee Road), Construction from FL–134 (103rd Street) to FL–8 (I–10) and FL–10(US–90/Beaver Street), NPDES and US Army COE Section 404 Permits Issuance, Clay and Duval Counties, FL.

Summary: EPA has environmental concerns with the project due primarily to a substantial direct impact to wetlands as well as potential impacts to air quality. EPA requests additional wetlands avoidance and minimization as well as further information regarding compensatory mitigation. An analysis of direct and cumulative impacts is also requested by EPA.

ERP No. DS–JUS–K81010–AZ Rating LO, Pinal County Private Detention Facility, Updated Information, Single Contract for Approximately 3,000 Beds, Possible Sites: Undeveloped Parcel of Land in the City of Eloy and the Existing Central Arizona Detention Center Located in Florence, Pinal County, AZ.

Summary: EPA has a lack of objections to the proposed project. Based on our review, it is unlikely that implementation of the proposed action, with proposed mitigation measures, will result in significant adverse environmental impacts.

Final EISs

ERP No. F–BLM–J02039–MT, Montana Statewide Conventional Oil and Gas and Coal Bed Methane Gas Exploration and Development Management Plan within the Bureau of Land Management's Powder River and Billings Resources Management Plan Areas and the State of Montana, Implementation, MT.

Summary: While the final EIS addressed EPA's objections on disclosing environmental impacts, particularly for water quality issues, mitigation issues relating to air and water quality remain. These may be addressed in the Record of Decision (ROD). Long term mitigation implementation will be addressed by both the State of Montana and EPA in Region 8. Mitigation for coalbed methane development will be addressed by EPA as it meets its responsibilities for direct implementation and oversight of state and Tribal programs.

ERP No. F–BLM–J65358–WY, Powder River Basin Oil and Gas Project, Extraction, Transportation and Oil and Natural Gas Resources Sale, Application for a Permit to Drill (APD), Special Use Permit and Right-of-Way Grants, Campbell, Converse, Johnson and Sheridan Counties, WY.

Summary: While the final EIS addressed EPA's objections related to disclosing environmental impacts, particularly water quality, mitigation issues realted to air and water remain and may be addressed in the Record of Decision (ROD). Implementation of long term mitigation will be addressed by both the State of Montana and EPA in Region 8 related to its direct implementation and oversight of state Tribal programs.

ERP No. F–BLM–L65371–OR, Rogue National Wild and Scenic River Hellgate Recreation Area (Applegate River to Grave Creek) Management Plan, Implementation, Bedford District, Josephine County, OR.

Summary: EPA continued to express environmental concerns that levels of recreation activity predicted under the preferred alternative may cause adverse impacts to wetlands and fishery resources. The selected alternative should achieve a better balance between visitors and recreation activities and impacts to the river ecosystem.

ERP No. F–COE–C30012–NJ, South River Raritan River Basin Hurricane and Storm Damage Reduction and Ecosystem Restoration, Implementation, Middlesex County, NJ.

Summary: EPA continues to have outstanding environmental concerns with regards to wetland and air quality impacts.

ERP No. F–JUS–K80043–CA, Juvenile Justice Campus (JJC) Construction and Operation of a 1,400 Bed and Related Functions Facility, Conditional Use Permit, Fresno County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–JUS–K80044–CA, Sacramento County Juvenile Hall Expansion Project, Accommodation of 90 New Beds in the Short-Term and 240 New Beds in the Long-Term, Sacramento County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NRS–H34029–MO, Little Otter Creek Watershed Plan, Installation of One Multi-Purpose Reservoir and Development of Basic Facilities for Recreational Use, Implementation, Caldwell County, MO.

Summary: EPA has no objection to the proposed watershed plan and appreciates the additional information provided in the FEIS concerning land acquisition, watershed conservation programs and aquatic habitat.

ERP No. FS–AFS–L65290–ID, North Lochsa Face Ecosystem Management Project, Updated Information on the Potential Effects of Vegetation and Aquatic Restoration Management, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–H32002–00, Missouri River Fish and Wildlife Mitigation Project to Restore Fish and Wildlife Habitat Losses Resulting from Construction, Operation and Maintenance of the Missouri River Bank Stabilization and Navigation Project (BSNP), Missouri River, Sioux City, Iowa to the Mouth near St. Louis, NB, KS and MO.

Summary: EPA has no objections to the proposed action. EPA supports the Congressional land acquisition target of 166,750 acres, with associated habitat development. EPA recommended that the Record of Decision provide details of possible incentive-based land acquisition opportunities.

ERP No. FS–JUS–K81010–AZ, Pinal County Private Detention Facility, Updated Information, Single Contract for 3,000 Beds, Possible Sites: Undeveloped Parcel of Land in the City of Eloy or the Existing Central Arizona Detention Center in Florence, Pinal County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 6, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–11633 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0162; FRL–7306–3]

Rhamnolipid Biosurfactant; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0162, must be received on or before June 9, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0162. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do

not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0162. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0162. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0162.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0162. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Jeneil Biosurfactant Company

PP 1F6288

EPA has received a pesticide petition 1F6288 from Jeneil Biosurfactant Company, 400 N. Dekora Woods Boulevard, Saukville, Wisconsin 53080, proposing pursuant to section 408(d) of

the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide rhamnolipid biosurfactant in or on all food commodities.

Pursuant to section 408(d)(2)(A)(I) of the FFDCA, as amended, Jeneil Biosurfactant Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Jeneil Biosurfactant Company, and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Rhamnolipid biosurfactant is intended for the prevention and control of plant pathogenic fungi on horticultural and agricultural crops. Fungal diseases are often spread by zoospores that are transported from one plant to another and from field to field. Rhamnolipid biosurfactant kills zoospores that cause fungal disease, on contact. Target pests are any zoosporic plant pathogenic microorganisms including the following genera: *Plasmodiophora*, *Polymyxa*, *Spongospora*, *Physoderma*, *Olpidium*, *Synchytrium*, *Rhizophydium*, *Achlya*, *Aphanomyces*, *Albugo*, *Peronopythora*, *Pachymetra*, *Pythium*, *Phytophthora*, *Trachysphaera*, *Basidiophora*, *Peronosclerospora*, *Plasmopara*, *Pseudoperonospora*, *Sclerophthora*, and *Sclerospora*. End-use formulations of rhamnolipid biosurfactant are applied through conventional equipment as a spray, fog, drench or seed soak to the point of saturation, and can also be incorporated into nutrient solutions for hydroponic plants and vegetables. The product will be diluted with water and applied to growing plants and agricultural commodities at a rate of 70 to 100 parts per million (ppm). One end-use formulation, Zonix Biofungicide (8.5% active ingredient), is proposed at this time.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Rhamnolipid biosurfactant, CAS number: 147858–26–2; CAS name: Decanoic acid, 3-[[6-deoxy-2-O-(6-deoxy-α-L-mannopyranosyl)-α-L-mannopyranosyl]oxy]-, 1-(carboxymethyl)octyl ester, mixture with 1-(carboxymethyl)octyl 3-[(6-deoxy-α-L-mannopyranosyl)oxy]decanoate. The basic composition of the active ingredient consists of a well-known carbohydrate (rhamnose sugar) and fatty acid (hydroxydecanoic acid). The active ingredient is a mixture of two types of rhamnolipid molecules, R1 (RLL) and R2 (RRLL) at a ratio of R2:R1 = 0.7 - 2.0. Chemical name of the rhamnolipid molecules is as follows: Molecule 1 (defined as R1 or RLL): Decanoic acid, 3-[(6-deoxy-α-L-mannopyranosyl) oxy]-, 1-(carboxymethyl) octyl ester; and molecule 2 (defined as R2 or RRLL): Decanoic acid, 3-[[6-deoxy-2-O-(6-deoxy-α-L-mannopyranosyl)-α-L-mannopyranosyl] oxy]-, 1-(carboxymethyl) octyl ester.

Rhamnolipid biosurfactant, in particular, causes the lysis of zoospores of plant pathogens. Zoospores, the unicellular, motile spore stage in the life cycle of plant pathogens, are vulnerable to rhamnolipid biosurfactants due to the fact that the membrane-bound spore lacks a protective cell wall. The rhamnolipid destroys the permeability of the plasma membrane and results in the loss of motility and rapid lysis of the zoospore. Rhamnolipid biosurfactants are effective against all zoosporic plant pathogens, such as downy mildews, *Pythium* and *Phytophthora*.

Biosurfactants are produced by a variety of microorganisms and have been shown to play a role in enhancing bioavailability and biodegradation of petroleum hydrocarbons, in the attachment and detachment of bacteria to surfaces, and in complexing metals efficiently. Biosurfactants have application in cosmetics, personal care products, detergents, textile processing, agricultural crop protection products, metal treatment and processing, leather processing, hard surface cleaning, electronics component cleaning, pulp and paper processing, paint formulation, hydrocarbon recovery, oil tank cleaning and oil sludge remediation.

Rhamnolipids are comprised of extra-cellular natural substances (glycolipids) produced during a controlled aerobic fermentation process utilizing a strain of the bacterium *pseudomonas aeruginosa*. Rhamnolipids are recovered from the process by centrifugation, extraction, and subsequent purification. No bacteria are present in the manufactured product and the production processes are strict in quality control to assure no live organisms exist. Purified rhamnolipids can be quantified by weight and rhamnose determination.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable. It is not expected that, when used as proposed, rhamnolipid biosurfactant would result in residues that are of toxicological concern.

C. Mammalian Toxicological Profile

Rhamnolipid biosurfactant has been evaluated for toxicity through oral, dermal, inhalation and eye routes of exposure. Studies indicate the end-use product is Toxicity Category I for eye irritation (diluted end-use product is Toxicity Category IV for eye irritation), and Toxicity Category IV for all other routes of exposure. Studies resulted in an acute oral lethal dose (LD_{50}) >5,000 milligrams/kilogram (mg/kg), acute dermal LD_{50} >5,000 mg/kg, acute inhalation lethal concentration (LC_{50}) 2.05 mg/L, primary eye irritation severe at 9.5% active ingredient and slight at 1.0% active ingredient, and primary skin irritation minimal.

A waiver has been requested for dermal sensitization based on the fact that the active ingredient is not toxic or irritating dermally, and a lack of reported effects by users of the surfactant in a variety of products. Rhamnolipid biosurfactants have been marketed for over 3 years as an emulsifier, dispersant and wetting agent. Since its discovery, no incidents of hypersensitivity have been reported by researchers, manufacturers or users. A waiver has been requested for genotoxicity based on the fact that rhamnolipid biosurfactant is not related to any known mutagen and does not belong to a chemical class of compounds containing known mutagens. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic or mutagenic. Rhamnose is a comparatively rare sugar listed by FDA as a food additive. Fatty acids are ubiquitous in animals and plants, and are the major source of energy in the body. Consequently the breakdown products of rhamnolipids are of little toxicological concern. A waiver has been requested for 90–day oral toxicity, teratogenicity and immunotoxicity based on the physical mode of action of the product, the demonstrated lack of oral, dermal and inhalation toxicity, and the innocuous nature of the potential breakdown products of rhamnolipid biosurfactants. The mode of action of rhamnolipid biosurfactants is a physical action on the plant pathogen rather than a specific

toxic action. Rhamnolipid biosurfactant is virtually non-toxic to rats as demonstrated in the acute oral, dermal and inhalation studies submitted. The lack of mammalian toxicity supports the position that the physical action of rhamnolipid biosurfactants is a physical interaction with the zoospore membrane rather than a specific toxic mechanism that might be of concern. The chemical structures of the rhamnolipids suggest that there is little potential for chronic toxicity, teratogenicity or immunotoxicity in animals or humans as a result of exposure. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Dietary exposure from use of rhamnolipid biosurfactant, as proposed, is minimal. The use of rhamnolipid biosurfactant involves low levels of active ingredient applied to growing plants prior to harvest. Residues of rhamnolipid biosurfactant are not expected to be of toxicological concern. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic.

ii. *Drinking water*. Similarly, exposure to humans from residues of rhamnolipid biosurfactant in consumed drinking water would be unlikely. Rhamnolipid biosurfactant is a naturally occurring extra-cellular substance that is produced by a microorganism known to exist in plant habitats; it is not known to grow or thrive in aquatic environments. Potential exposure to surface water would be negligible and exposure to drinking water (well or ground water) would be impossible to measure.

2. *Non-dietary exposure*. The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Personal protective equipment mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, rhamnolipid biosurfactant would result in residues that are of toxicological concern. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic.

F. Safety Determination

1. *U.S. population*. Acute toxicity studies have shown that rhamnolipid biosurfactant is not toxic, but is irritating via ocular exposure. Residues of rhamnolipid biosurfactant are not expected to be of toxicological concern. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic. There is a reasonable certainty of no harm to the general U.S. population from exposure to this active ingredient.

2. *Infants and children*. As mentioned above, residues of rhamnolipid biosurfactant are not expected to be of toxicological concern. There is a reasonable certainty of no harm for infants and children from exposure to rhamnolipid biosurfactant from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that rhamnolipid biosurfactant functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no U.S. EPA tolerance for rhamnolipid biosurfactant.

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level is not required for rhamnolipid biosurfactant.

[FR Doc. 03–11478 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7496–7]

Office of Environmental Information Draft Data Standard for Exchanging Permitting Information and Draft Data Standard for Federal Facility Identification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 45-day public comment period for the draft data standards: Draft Data Standard for Permitting Information; and the Draft Federal Facility Identification Data Standard. These draft standards consist of a list of data elements, definitions for these elements, formats, notes, and explanatory preamble language. The draft standards were developed through the partnership efforts of States, tribes, and the U.S. Environmental Protection Agency participating in the Environmental Data Standards Council (EDSC). The EDSC convened one Action Team to develop a more comprehensive set of data elements to facilitate the sharing permit related information. The EDSC also formed an Action Team whose purpose was to reach consensus on standardized means of identifying facilities that are owned or operated, or were owned or operated, by the Federal government. The EPA and the EDSC invite comment on these standards from States, EPA, tribes, database managers in the public and private sectors, and the general public with interest in exchanging information concerning environmental permits and Federal facilities.

DATES: Comments must be submitted on or before June 23, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit 1.A. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Draft Data Standard for Permitting Information, Tim Crawford, Office of Environmental Information, Office of Information Collection, MC–2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; Telephone (202) 566–1652.

Draft Federal Facility Identification Data Standard, John Harman, Office of Environmental Information, Office of Information Collection, MC–2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; Telephone (202) 566 0748.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of These Draft Standards and Other Related Information ?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OEI–2003–0028. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the

collection of materials that is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.''

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* You may view and download the draft data standards and related explanatory material at the EDSC Web site at: *http://www.epa.gov/edsc/* in the area of the site marked ''Data Standards.'' The draft data standards can also be viewed and downloaded at the EPA Environmental Data Registry (EDR) at *http://www.epa.gov/edr/* in the area of the site marked ''Data Standards''. Or for those with password access, at the WISER portion of the State/EPA Web site at: *http://www.ecos.org/wiser.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments, however, late comments may be considered if time permits.

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

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OEI–2003–0028. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *oei.docket@epa.gov,* Attention Docket ID No. OEI–2003–0028. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send three copies of your comments to: Office of Environmental Information Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OEI–2003–0028.

3. By Hand Delivery or Courier. Deliver your comments to the location provided in Unit I.A.1, Attention Docket ID No. OEI–2003–0028. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. By Facsimile. Fax your comments to: (202) 566–1753, Attention Docket ID. No. OEI–2003–0028.

C. What Should I Consider as I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background: Environmental Data Standards Council

Data sharing has become an increasingly important aspect of sound environmental management. States, Tribes, and EPA together face the critical challenge of sharing information among themselves and with their respective stakeholders and public. Fundamental to the seamless exchange of data are data standards. Data standards help improve the ability of partners (internal and external) to exchange data efficiently and accurately, and also assist secondary users of data to understand, interpret, and use data appropriately. Recognition of the need for EPA, States and Tribes to develop and agree upon data standards for environmental information sharing has lead to the creation of the EDSC. Data standards are documented agreements on formats and definitions of data elements. The EDSC agrees to develop data standards only when there is a strong environmental management business reason that would benefit from establishing a consistency in information exchanged.

These draft standards were delivered to the EDSC and approved for publication in the **Federal Register** for a 45-day public comment period. After the comment period announced in this Notice is complete, the EDSC and its Action Teams will review comments received and make appropriate modifications. The EDSC will then consider approval of these data standards as appropriate. EDSC approval does not bind an individual agency to using a standard. It will be up to the individual or programs to determine if, when, and how it might use a standard developed under the auspices of the EDSC. It is the intent of EPA to adopt and implement the consistent use of EDSC-approved standards in its information systems and programs.

III. Background of Draft Data Standards

A. Draft Data Standard Permit Related Information

The EDSC is proposing to adopt a revision to the original Permitting Data Standard that was approved in April 2002. The original exchange standard for permit related information identified those data elements that are generally believed to be universally applicable to the identification and tracking of permits. While standard terms, definitions and formats for these types of data were needed, it was subsequently recognized that other information that is also common to multiple permitting programs exists and should be included in the same standard rather than duplicate similar information in separate data standards. As a result, the revised draft permitting data standard incorporates the original permitting data standard and extends the original scope to include information germane to multiple permitting programs.

The draft Permitting Information Data Standard consists of data elements from the original Permit Data Standard organized by the categories or data blocks: Permit Identification, Permitted Feature, and Permit Administration. The revised draft standard also includes data elements under the data blocks: Facility/Feature Characteristic, Control Methodology, Permit Condition, Reporting Condition, and Monitoring Condition. These additional data blocks provide data elements that can be used to describe the functional aspects of a facility or feature, as well as the constraints imposed by a permit including any monitoring or reporting requirements. The Action Team determined that additional permit related information will likely require program-specific permit standards.

B. Draft Federal Facility Identification Data Standard

The EDSC is proposing a Data Standard for the identification of facilities that are owned or operated, or were owned or operated, by the Federal Government. This draft Federal Facility Identification Data Standard builds on the Facility Identification Data Standard by focusing on identification issues for a specific type of facility.

Several EPA offices have specific programs that focus on issues related to Federal facilities. Other EPA programs use naming conventions to identify Federal facilities separately from other types of facilities. The reporting forms for certain EPA programs include data elements that ask facilities to indicate whether they are owned or operated by the Federal government.

Federal facilities are a diverse class, having functions that typically are different from other privately owned and operated facilities, thus potentially posing unique types of environmental concerns. Federal facilities conduct activities ranging from launching space shuttles to managing national parks. Tracking ownership or operation of a site over time is also important because certain former Federal sites can have legacy issues, such as spent munitions at former Department of Defense sites.

The Draft Federal Facility Identification Data Standard includes the three categories of data elements, or data blocks: Federal Facility Identification Information; Federal Facility Ownership and/or Operation Information; and Federal Facility Responsible Party Information. The Federal Facility Ownership and/or Operation Information category provides a means of indicating the present ownership or operation of a facility that once was a Federal facility. An example is a local airport that formerly was an Air Force base. The Federal Facility Responsible Party Information category provides standardized naming conventions for the Federal agencies that own or operate a particular Federal facility and for the classification of the ownership/operation of a Federal facility.

An ancillary, but supportive goal, of the Draft Federal Facility Identification Data Standard is to serve as a guide for identifying facilities owned or operated by non-Federal governments, such as States, tribes, counties or municipalities. States and tribes may choose to adopt the permissible values and follow similar naming conventions

when tracking non-Federal government facilities.

IV. Future Revisions

EDSC standards are periodically reviewed and revised as recommended by the EDSC or the stewards of the respective data standards. The most current standards will be posted at *www.edsc.org* and *www.epa.gov/edr.*

V. Review of Draft Standards to Date

These draft standards have received significant input through the representatives from EPA programs, States, and tribal organizations serving on the Action Teams and consulted though the development of the draft standard. EDSC members have also reviewed and recommended these draft standards for this public comment process.

Dated: April 24, 2003.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 03–11631 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7495–9]

Determination of the Waste Isolation Pilot Plant's Compliance With Applicable Federal Environmental Laws for the Period 2000 to 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Based on documentation submitted by the U.S. Department of Energy (DOE) for the Waste Isolation Pilot Plant (WIPP), the U.S. Environmental Protection Agency (EPA or ''we'') determined that between 2000 and 2002, DOE operated the WIPP facility in compliance with applicable Federal statutes, regulations, and permit requirements designated in Section 9(a)(1) of the WIPP Land Withdrawal Act, as amended. The Secretary of Energy was notified of the determination via a letter from EPA Administrator Christine Todd Whitman dated May 2, 2003.

We made this determination under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA). (Pub. L. Nos. 102–579 and 104–201.) Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, DOE shall comply with respect to WIPP with; regulations for the management and storage of radioactive waste (40 CFR part 191, subpart A); the Clean Air Act; the Solid Waste Disposal Act; the Safe Drinking Water Act; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation, and Liability Act; and all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires DOE biennially to submit to EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in section 9(a)(1). (DOE must also submit similar documentation of compliance with the Solid Waste Disposal Act to the State of New Mexico.) Section 9(a)(3) requires the Administrator of EPA to determine on a biennial basis, following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with the pertinent laws, regulations, and permit requirements, as set forth at section 9(a)(1).

We determined that for the period 2000 to 2002, the DOE-submitted documentation showed continued compliance with 40 CFR Part 191, subpart A, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. With respect to other applicable Federal laws pertaining to public health and safety or the environment, as required by section 9(a)(1)(G), DOE's documentation also indicates that DOE was in compliance with the Clean Water Act, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and certain statutes under the jurisdiction of the Department of Interior.

This determination is not directly related to, or a part of, our certification decision regarding whether the WIPP complies with EPA's disposal regulations for transuranic radioactive waste at 40 CFR part 191.

FOR FURTHER INFORMATION CONTACT: Nick Stone; telephone number: (214) 665–7226; address: WIPP Project Officer, Mail Code 6PD–N, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202.

Materials related to this determination have been placed in docket A–98–49, item II–B2–14, located at the U.S. Environmental Protection Agency, Air and Radiation Docket, Attn: Docket A–98–49, EPA Docket Center (EPA/DC), EPA West, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. The docket is open for public inspection from 8 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–11525 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judy B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy B.

Herman at 202–418–0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0919.

Title: CORES Certification Form.

Form No.: FCC Form 162.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 200.

Estimated Time Per Response: .084 hours (5 minutes).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 17 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: This form will be used in the transition period to certify entities FCC Registration Number (FRN). The FRN will affect approximately 60 public-use application forms and will require the forms to change. During the transition period the FCC Form 162 will be kept in effect until all FCC forms have been updated with an FRN block. Once the application forms have been updated, this information collection will be canceled. The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Commission. The FRN will be used solely by the Commission as the unique business account number for identification purposes only.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–11492 Filed 5–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 1, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judy B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0917.

Title: CORES Registration Form.

Form No.: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 134,500.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 22,327 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission Registration System (CORES) will assign each entity doing business with the Commission with a FCC Registration Number (FRN) for collecting and reporting on any delinquent amounts arising out of such person's relationship with the FCC. The respondents are anyone doing business with the FCC. These forms are received by both Mellon Bank and FCC CORES Help Desk for data entry. The information will be used for a standard data repository for entity name, address, Taxpayer Identification Number, telephone number, email address, fax, contact representative, contact representative address, telephone, email address and fax.

OMB Control No.: 3060–0918.

Title: CORES Update/Change Form.

Form No.: FCC Form 161.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 21,000.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,486 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The purpose of this form is used to update/change an entity name, address, telephone number, email address, fax, contact representative, contact representative address, telephone number, email address, and fax in the CORES system. The information is received at the CORES Help desk for data entry/update. The purpose of obtaining the FCC Registration Number (FRN) is for collecting and reporting on any delinquent amounts arising out of such person's relationship with the FCC. The respondents are anyone doing business with the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–11493 Filed 5–8–03; 8:45 am]

BILLING CODE 6712–01–P

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 23, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. R.C. Patel, Duluth, Georgia, and Mukesh Patel, Atlanta, Georgia; to each retain voting shares of Horizon Bancorp, Inc., Decatur, Georgia, and thereby indirectly retain voting shares of Horizon Bank, Decatur, Georgia.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. William F. Wanner, Jr. Revocable Trust U/A Dated 12/29/94 and William F. Wanner, Jr., and Kathleen A. Wanner as Trustees, all of Wayzata, Minnesota; to acquire voting shares of Ridgedale Financial Services, Inc., Minnetonka, Minnesota, and thereby acquire voting shares of Ridgedale State Bank, Minnetonka, Minnesota.

Board of Governors of the Federal Reserve System, May 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11521 Filed 5–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Columbia Bancorp, Inc., Cincinnati, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Columbia Savings Bank, Cincinnati, Ohio.

Board of Governors of the Federal Reserve System, May 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11520 Filed 5–8–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Kentucky, North Carolina, Ohio, and Virginia

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03–1, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This notice announces the new per diem rates for Kentucky, North Carolina, Ohio, and Virginia.

DATES: This notice is effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite Notice of Per Diem Bulletin 03–1.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002, are being changed in the following locations:

State of Kentucky

- Cities of Hebron/Florence/Covington, including Boone and Kenton Counties

State of North Carolina

- City of Chapel Hill, including Orange County.
- City of Raleigh, including Wake County.
- Cities of Research Triangle Park/Durham, including Durham County.

State of Ohio

- City of Cincinnati, including Hamilton and Warren Counties.

State of Virginia

- City of Colonial Heights (independent city).
- City of Hopewell (independent city).
- City of Petersburg (independent city).
- Prince George County.
- City of Richmond (independent city, but includes Chesterfield and Henrico Counties, also Defense Supply Center).

B. Change in Standard Procedure

Since per diem rates frequently change, effective April 28, 2003 (see 68 FR 22314, April 28, 2003), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem

rates, formerly published in appendix A to 41 CFR chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem.* This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: May 2, 2003.

G. Martin Wagner,

Associate Administrator.

[FR Doc. 03–11529 Filed 5–8–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03135]

Steps to a HealthierUS: A Community-Focused Initiative To Reduce the Burden of Asthma, Diabetes, and Obesity; Notice of Availability of Funds

Application Deadline: July 15, 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 Department of Health and Human Services (HHS), acting through the Centers for Disease Control and Prevention (CDC), and combining the strengths and resources of all relevant HHS agencies and programs, announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to implement the Secretary of HHS Initiative for Americans entitled Steps to a HealthierUS (hereafter referred to as STEPS). The relevant HHS agencies and offices include, but are not limited to, the Administration on Aging, Administration for Children and Families, Agency for Healthcare Research and Quality, CDC, Centers for Medicare and Medicaid Services, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, Office of Disease Prevention and Health Promotion, and the Substance Abuse and Mental Health Services Administration hereafter referred to as ''HHS agencies'').

STEPS is a bold new initiative. The centerpiece of this initiative is a five-year cooperative agreement program to create healthier communities by improving the lives of Americans through innovative and effective community-based health promotion and chronic disease prevention and control programs.

STEPS is based on the President's HealthierUS Initiative, which highlights the influence that healthy lifestyles and behaviors—such as making healthful nutritional choices, being physically active, and avoiding tobacco use and exposure—have in achieving and maintaining good health for persons of all ages. STEPS will work through public-private partnerships at the community level to support community-driven programs that enable persons to adopt healthy lifestyles that contribute directly to the prevention, delay, and/or mitigation of the consequences of diabetes, asthma, and obesity.

The initiative's goals are to:

- Prevent 75,000 to 100,000 Americans from developing diabetes
- Prevent 100,000 to 150,000 Americans from developing obesity
- Prevent 50,000 Americans from being hospitalized for asthma

The purpose of STEPS is to enable communities to reduce the burden of chronic disease, including: Preventing diabetes among populations with prediabetes; increasing the likelihood that persons with undiagnosed diabetes are diagnosed; reducing complications of diabetes; preventing overweight and obesity; reducing overweight and obesity; and reducing the complications of asthma. STEPS will achieve these outcomes by improving nutrition; increasing physical activity; preventing tobacco use and exposure, targeting adults who are diabetic or who live with persons with asthma; increasing tobacco cessation, targeting adults who are diabetic or who live with persons with asthma; increasing use of appropriate health care services; improving the quality of care; and increasing effective self-management of chronic diseases and associated risk factors.

The key to the success of STEPS will be community-focused programs that include the full engagement of schools, businesses, faith-communities, health care purchasers, health plans, health care providers, academic institutions, senior centers, and many other community sectors working together to promote health and prevent chronic disease. STEPS programs need to build on, but not duplicate, current and prior HHS programs and coordinate fully with existing programs and resources in the community.

Background

In the United States today, seven of ten deaths and the vast majority of serious illness, disability, and health care costs are caused by chronic diseases, such as diabetes, asthma, and obesity. Underlying these serious diseases are several important risk factors that can be modified years before they contribute to illness and death. Three risk factors—poor nutrition, lack of physical activity, and tobacco use and exposure—are major contributors to the nation's leading causes of death and must be addressed as part of this initiative. The first two of these risk factors contribute primarily to obesity and diabetes. Tobacco use contributes primarily to asthma, but it also contributes to the risk of poor circulation and heart disease among those who have diabetes. Research has demonstrated a clear link between exposure to tobacco smoke and exacerbation of asthma, and has provided evidence of a causal link between exposure to tobacco smoke and the development of asthma. Research has also shown that smoking heightens the risk for diabetes-related complications of neuropathy and nephropathy; cigarette use has been shown to be a significant risk factor for death by coronary heart disease in type 2 diabetes. By requiring recipients to address nutrition, physical activity, and tobacco use as core components of their community interventions, STEPS programs will reduce the burden of diabetes, asthma, and obesity.

Efforts to address risk factors and disease management through improved health care access, health care utilization, health care quality, and self-management skills, including adherence to medication and other health regimens, also may be addressed as part of this initiative. While payment for health care services is not an allowable expense under this program announcement, increasing access to and use of diagnostic screening and improved treatment can be accomplished in four primary ways: (1) Identifying existing services and resources in the community and linking/referring persons to treatment; (2) educating health care providers on current standards of care and methods for implementing those standards; (3) developing consumer awareness and demand for quality health care (*e.g.*, using media to promote increased

demand for vaccinations, appropriate screenings, and treatment); (4) helping health care providers implement effective office-based strategies, such as patient reminder systems, that help ensure timely and appropriate care.

This cooperative agreement is designed to establish community-based, coordinated, comprehensive health promotion, prevention, and control programs of sufficient intensity and durability to create sustainable change and thereby achieve the ''Healthy People 2010'' objectives shown in Attachment A. All referenced attachments are posted with this announcement on the CDC Web site (*http://www.cdc.gov*). Click on ''Funding'' then ''Grants and Cooperative Agreements''.

Resources useful to the preparation of applications and in support of program implementation are available in Attachment B.

Cooperative agreement recipients are expected to participate fully in coordinated monitoring and evaluation activities that include collecting and reporting common performance measures as well as participating in an independent, external evaluation to measure the impact of STEPS.

C. Eligible Applicants

Cities, urban communities, states, and Tribes or Tribal consortia are eligible under this announcement. The District of Columbia, other large cities, and urban communities (defined as a contiguous geographic area (including counties) with a population exceeding 400,000 persons) with substantial expertise and infrastructure for the design, delivery and evaluation of chronic disease prevention and control interventions can apply directly under this announcement (hereafter referred to as ''Large City and Urban Community'' applicants). Federally recognized Tribal Governments, Regional Area Indian Health Boards, Urban Indian organizations, and Inter-Tribal Councils which serve 10,000 or more American Indians/Alaskan Natives in their catchment area(s) can apply directly under this announcement (hereafter referred to as ''Tribal'' applicants). All other communities, not otherwise included in the applications above, may be eligible for awards under state applications (hereafter referred to as ''State-Coordinated Small City and Rural Community'' applicants).

In determining eligibility, Large Community and Urban Community applicants must meet the criteria under number 1 below, Tribal applicants must meet the criteria under number 2 below, and State-Coordinated Small Cities and Rural Community applicants must meet the criteria under number 3 below.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, or any other form.

1. Large City and Urban Community Applicants

The official local health department (or its bona fide agent), or its equivalent, as designated by the mayor, county executive, or other equivalent governmental official, will serve as the lead/fiduciary agent for a Large City and Urban Community application. For this announcement, the term ''large cities and urban communities'' is defined as any contiguous geographic area (including counties) with a population exceeding 400,000 persons. The District of Columbia is eligible to apply for funding under this section of the program announcement. Large City and Urban Community Applicants can specify an intervention area that is smaller than the entire city or community, but the intervention area must be geographically contiguous and must include a population of at least 150,000 residents, but not more than 500,000 residents. Only one application will be accepted from each eligible large city and urban community.

2. Tribal Applicants

Federally recognized Tribal Governments, Regional Area Indian Health Boards, Urban Indian organizations, and Inter-Tribal Councils as designated by the Principal Tribal elected official or chief executive officer will serve as the lead/fiduciary agency for tribal applications. Each tribal application must include a minimum population of 10,000 American Indians/Alaskan Natives within a defined geographic area or set of areas that may or may not be geographically contiguous.

3. State-Coordinated Small City and Rural Community Applicants

The official state health department (or its bona fide agent), or its equivalent, as designated by the Governor, is to serve as the lead/fiduciary agency for Small City and Rural Community applications. For this announcement, the term ''State'' includes the 50 states, 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. States must identify two to four communities of total resident size not to exceed 800,000 persons combined. Each selected community must be geographically contiguous and include a minimum population of 10,000 persons. Neighboring small or rural counties may be grouped together to form a single, contiguous ''community.'' States are strongly encouraged to include diverse communities that vary in size and location. HHS anticipates funding some programs that encompass rural communities as well as small cities. Only one application will be accepted from each state.

D. Funding

Availability of Funds

Approximately $13,650,000 is available in FY 2003 to fund STEPS. Of this amount, approximately $9,000,000 is available to fund 9 to 12 Large City and Urban Community applications. It is expected that the average award will be $1,000,000 and will range from $750,000 to $1,250,000. Approximately $250,000 is available to fund one Tribal application. Of the total amount available, approximately $4,400,000 is available to fund up to four State-Coordinated Small City and Rural Community application. It is expected that the average award will be $1,500,000 and will range from $1,000,000 to $2,000,000. State Health Departments must ensure that 75 percent of the total STEPS award is distributed on an annual basis to the identified communities in the state-coordinated application within four months of the award date, and that the remaining funds are used to support the funded communities through technical assistance and other means.

It is expected that awards will begin on or about September 22, 2003, and will be made for a 12-month budget period within a project period of up to five years. It is expected that projects will emphasize program assessment and evaluation during the first two years of funding. Continuation awards and level of funding within an approved project period (FY 2004 through FY 2007) will be based on the availability of funds and satisfactory progress in achieving performance measures as evidenced by required progress reports.

Funding for FY 2004 and beyond is expected to range from $2,000,000 to $3,000,000 for each Large City and Urban Community recipient; $300,000 to $1,000,000 for each Tribal recipient; and from $4,000,000 to $10,000,000 for each State-Coordinated Small City and Rural Community recipient. It is also anticipated that additional FY 2004

resources may enable the Secretary to fund additional prevention initiatives based on this announcement or a separate announcement.

Applicants funded for the first time in FY 2004 will be required to submit a revised work plan and budget in order to receive funds at FY 2004 funding levels during their first year of funding.

Pending availability of funds, beginning in FY 2004 and each of the remaining years of this program announcement (September 22, 2004 through September 21, 2007), there may be an open season for new competitive applications. Specific guidance will be provided with exact application due dates and funding levels each year.

Recipient Financial Participation

Matching funds, that is, a specific percentage of program costs that must be contributed by a recipient in order to be eligible for this announcement, are not required. Applicants are encouraged, however, to identify financial and in-kind contributions from their own organization and their partners to support and sustain the activities of this program announcement. Program applications that include private partners who contribute in-kind or funding support and incentives to these efforts are strongly encouraged.

Funding Preferences

Preference in funding, based on well-documented data, may be given to ensure:

- Inclusion of populations disproportionately affected by chronic disease and associated risk factors.
- Inclusion of geographic areas with high, age-adjusted rates of chronic disease and associated risk factors.
- Geographic distribution of STEPS programs nationwide.
- Inclusion of communities of varying sizes, including rural, suburban, and urban communities.

Use of Funds

Cooperative agreement funds may be used to expand, enhance, or complement existing activities to accomplish the objectives of this program announcement. Funds may be used to pay for, but are not limited to: staffing, consultants, contractors, materials, resources, travel, and associated expenses to implement and evaluate intervention activities such as: promoting healthy food choices in away-from-home settings; encouraging restaurants to label heart-healthy menu items; establishing community walking programs; helping schools, worksites, shopping malls, senior centers, and other community locations establish health-promoting programs and environments; establishing community-based education, exercise, healthy nutrition, and smoking cessation programs in accessible locations; educating health plans and providers regarding standards for preventive health care practices and how to fully implement them; enhancing office-based systems to ensure that persons with chronic disease are called for routine exams and other follow-up; using information technology (such as the web and email) to communicate with people with chronic disease or associated risk factors; developing community support groups for persons with chronic disease or associated risk factors; conducting awareness and media campaigns to educate persons about their risk of chronic disease and what actions to take; using health risk appraisals such as the American Diabetes Association's self-assessment risk tool, ''Take the Test/Know Your Score''; conducting community-based outreach to high-risk individuals, encouraging them to seek appropriate care; establishing telephone hotlines for tobacco cessation and other health information needs; training lay health workers (''promotoras'') to conduct health promotion programs.

Funds received under this announcement may not be used to supplant/replace existing local, state, or federal funds or activities. Cooperative agreement funds may not be used for direct patient care, diagnostic medical testing, patient rehabilitation, pharmaceutical purchases, facilities construction, lobbying, basic research or controlled trials.

Lead/fiduciary agencies will be eligible to receive up to five percent of their total award for indirect costs.

Direct Assistance

Direct assistance, that is, assistance provided by the Federal government in the form of Federal employee staffing when detailed to the recipient (pay, allowances, and travel), supplies, or equipment in lieu of cooperative agreement/financial assistance funds, is not available as part of FY 2003 STEPS awards. Direct assistance in lieu of cash may be available in subsequent years.

E. Program Requirements

All recipient activities funded under this program announcement need to coordinate with and reinforce, but not duplicate, related, existing federal, state, and local activities. In conducting activities to achieve the purpose of this program announcement, Large Cities and Urban Community applicants will be responsible for the activities listed under number 1 below, Tribal applicants for the activities listed under number 2 below, State-Coordinated Small City and Rural Community applicants for the activities listed under number 3 below, and HHS Agencies for the activities listed under number 4 below. All recipients must address both community and school-based components.

1. Large City and Urban Community Recipient Activities

(a) Fiduciary Responsibilities

i. *Lead Agency.* Establish the lead/fiduciary agency to be the local health department (or its bona fide agent) or its equivalent as designated by the mayor, county executive, or other equivalent governmental official.

ii. *Allocate Funds.* Allocate and disperse funds to the local education agency or agencies responsible for schools within the intervention area, and additional key partners and collaborators to implement recipient activities. Include adequate funds to participate fully in the substantial data collection and evaluation activities associated with this award.

iii. *Contract Services.* Contract for services, as needed, to accomplish the objectives of this program announcement.

vi. *Link Budget to Performance.* Provide integrated progress and financial reports that link the performance and expenditures of the local health department and all key partners.

v. *Sustainability.* If funded for years three through five, engage in efforts that will sustain successful interventions on a long-term basis.

(b) Community Consortium

Identify key partners and coalitions that focus on the prevention and control of chronic disease and associated risk factors. Build an alliance of partnerships and coalitions committed to participating actively in the planning, implementation, and evaluation of STEPS. Effective partnerships are central to the success and sustainability of STEPS. Key partners should demonstrate a high-level commitment to the initiative by their willingness to invest expertise, leadership, personnel, and other resources in the success of the project.

Partners must include, but are not limited to, the mayor's office (or equivalent); local and state health departments; local and state education agencies; key community, health care, voluntary, and professional

organizations; business, community, and faith-based leaders; and at least one lay person representative of the population to be served. Other partners may include, but are not limited to, existing community coalitions (especially those already focusing on chronic diseases), Federally Qualified Health Centers including community health centers [1], worksite wellness programs, health care purchasers, health plans, unions, health care providers for farm and migrant workers and their families, school-based and school-linked clinics, health care providers for the homeless, primary care associations, social service providers, health maintenance organizations, private providers, hospitals, universities, schools of public health, academic health centers, organizations that serve young children and youth, parks and recreation departments, departments of transportation, public housing authorities, state Medicaid officials, service organizations, food manufacturers and distributors, aging services organizations, senior centers, community action groups, consumer groups, and the media.

Note: [1] Consolidated Health Centers under Section 330, of the Public Health Service Act are commonly referred to as community health centers. They include centers that tailor resources for populations such as low-income persons, the uninsured, homeless people, migrant and seasonal farm workers, and public housing residents.

(c) Leadership, Coordination, and Management

i. *Leadership Team.* Establish and coordinate a leadership team responsible for overseeing project activities, establishing and maintaining an organizational structure and governance for the community consortium (including decision-making procedures), determining the project budget and subcontracts, and participating in project-related local and national meetings. The leadership team must include, but is not limited to, the local health department, the local education agency or agencies, and other key leaders from the community.

ii. *Project Staff.* Establish and maintain paid project staff to include a full-time project coordinator with management experience in risk factor interventions and community-based chronic disease prevention and control. Other part-time or full-time staff, contactors, and consultants must be sufficient in number and expertise to ensure project success and have demonstrated skills and experience in coalition and partnership development, community mobilization, health care systems, public health, program evaluation, epidemiology, data management, health promotion, policy and environmental interventions, health care quality improvement, communications, resource development, school health, and the risk factor and disease areas targeted by the program.

iii. *Project Management.* The project coordinator with the other project staff and leadership team, should:

a. Encourage active participation of consortium members in project activities and decisions, through regular meetings and other proactive methods of communication

b. Actively oversee all project activities during their planning, development, implementation, and evaluation phases

c. Track performance in relationship to the achievement of short-term and intermediate outcomes and budgetary expenditures

d. Seek technical assistance from the State, HHS agencies, other Federal agencies, other recipients, national voluntary organizations, universities, or other sources

e. Keep the Project Officer informed and seek Project Officer input and assistance

f. Take corrective action promptly when necessary to ensure project success

g. Participate in STEPS-wide program evaluations.

iv. *Coordinate with State Plans and Activities.* Ensure that community objectives, activities, and interventions are consistent with and supportive of state plans and activities for the prevention and control of diabetes, asthma, obesity, and associated risk factors. Ensure that community objectives, activities, and interventions do not duplicate existing efforts.

(d) Community Action Plan, Community and School-Based Interventions

Identify and implement high priority, eligible intervention strategies proven to prevent and control diabetes, asthma, and obesity. To establish such priorities, communities must examine their chronic disease burden, at-risk populations, current services and resources, and partnership capabilities to develop a comprehensive community action plan.

Communities can select particular areas of programmatic focus within STEPS. However, all communities must address nutrition, physical activity, and tobacco use and exposure since these areas will positively impact primary and/or secondary prevention in diabetes, asthma, and obesity. Additionally, communities are expected to implement other specific interventions to reduce the burden of the diseases/conditions addressed by STEPS (asthma, diabetes, and obesity). Such interventions might include: (1) Conducting community-wide campaigns to implement a diabetes assessment questionnaire (*e.g.*, American Diabetes Association's ''Are You at Risk?''); (2) promoting quality care by providing health care settings with effective systems for handling referrals, follow-ups, and patient reminder systems; and (3) providing training for health care providers on how to establish effective asthma care plans with patients and their families.

i. *Community Interventions.* Programs are expected to employ multiple, evidence-based public health strategies based on the existing and emerging research base and careful scientific reviews such as the Guide to Community Preventive Services (*http://www.thecommunityguide.org/*), the Guide to Clinical Preventive Services (*http://www.odphp.osophs.dhhs.gov/pubs/guidecps/*) and *http://www.ahrq.gov/clinic/prevnew.htm),* and the National Registry for Effective Programs (*http://modelprograms.samhsa.gov/template.cfm?page=nrepbutton*). Effective public health strategies may include changes to the social and physical environments; health promotion, public education, and information; media and other communication strategies; technological advances; economic incentives and disincentives; system improvements; provider education and medical office-based improvement strategies. (*See* Attachment C for additional, example intervention strategies).

While project activities should reach all persons in an identified intervention area, special efforts should be taken to ensure focus on populations with disproportionate burden of chronic diseases/conditions who also tend to experience disparities in access to and use of preventive and health care services. Populations of special focus might include racial and ethnic minorities, low-income persons, the medically underserved, persons with disabilities, and others with special needs. Programs must be culturally competent, and meet the health literacy and linguistic needs of target populations in the intervention area.

Programs should optimize resources by coordinating and partnering with existing programs and resources in the community, surrounding areas, and the state (*e.g.*, state incentive grant programs). Programs should expand the resources available through public-

private ventures, foundation grants, public funding, and in-kind contributions in order to achieve and sustain STEPS outcomes.

Collaborative partnerships with, for example, professional organizations; health care providers, employers/purchasers, and plans; faith-based organizations; schools; child care, early childhood programs, and other organizations that serve children and youth; senior centers or service organizations; primary care associations; area health education centers; community health centers; local, regional, and state chapters of national chronic disease organizations (*e.g.*, the American Diabetes Association, the American Heart Association, the American Lung Association, the Asthma and Allergy Foundation of America, the American Cancer Society); and many others will be key to reaching affected populations and delivering and sustaining effective programs. Strong, cooperative linkages between clinical preventive care and community public health should be established and maintained.

With direction and coordination from the leadership team, the community consortium should develop and implement priority community health interventions to prevent and control diabetes, asthma, obesity, and associated risk factors in the identified intervention area. Such interventions may include:

a. Actively engaging members of the intended audience in community assessments, program planning (including establishing program goals and specifying intervention content and design), delivery, evaluation, and program improvement.

b. Supporting community-based initiatives to increase physical activity, improve nutrition, and eliminate tobacco use and exposure.

c. Increasing healthy food choices in restaurants, grocery stores, vending machines, worksites, shopping malls, senior centers, and other community settings. *http://www.cdc.gov/nccdphp/dnpa/obesity/index.htm*

d. Increasing access to and use of attractive and safe locations for engaging in physical activity.

e. Increasing access to and use of effective cessation programs for persons who use tobacco, targeting adults who are diabetic or who live with persons with asthma. (*http://www.surgeongeneral.gov/tobacco/default.htm*)

f. Improving strategic communication through the use of media and information technologies to improve public awareness and motivation to establish healthy nutrition, physical activity, and avoidance of tobacco use.

g. Developing supportive environments to complement and sustain individual change efforts.

h. Providing social support, reinforcement, and inducements to make healthy choices.

i. Enlisting the support of organizations and settings (*e.g.*, after school programs, worksites, youth-serving organizations, families, faith-based organizations, senior centers, and health care partners) to encourage and support healthy behavior.

j. Working with health care providers, health plans, and employer/purchasers to increase the use of evidence-based preventive care practices.

k. Improving access to and utilization of quality health care services for primary and secondary prevention of the Steps diseases/conditions (asthma, diabetes, and obesity).

l. Increasing self-management skills, including adherence to medication and other health regimens, among persons with established risk factors or chronic disease.

m. Ensuring adequate provider education, including strategies to implement national guidelines on quality care, and improving provider communication and counseling skills.

n. Educating persons with chronic disease on the proper management of their disease and the importance of seeking early, appropriate care to prevent and minimize complications.

o. Raising levels of health literacy to enable persons to make informed health decisions.

ii. *School interventions.* With guidance from the local education agency or agencies, implement school health interventions to prevent and control diabetes, asthma, and obesity in the same intervention area being served by the community interventions. Such interventions may include:

a. Identifying or establishing a full-time school health program coordinator and School Health Council to direct project activities and assist in their implementation. See the American Cancer Society's Guide on the Role of the School Health Coordinator and Guide to School Health Councils. (*http://www.schoolhealth.info*)

b. Reviewing and strengthening the schools' health-related policies and instructional programs using the CDC's School Health Index (*http://www.cdc.gov/nccdphp/dash/SHI/*), and the National Association of State Boards of Education's Fit, Healthy and Ready to Learn: A School Health Policy Guide. (*http://www.nasbe.org/HealthySchools/fithealthy.mgi*)

c. Providing adequate physical education for all students throughout the school year and increasing opportunities for physical activity through recess, intramural activities, and other offerings. (*http://www.cdc.gov/nccdphp/dash/healthtopics/physical_activity/guidelines/index.htm*)

d. Providing professional development for staff to enable them to deliver effective, skills-based health instruction for students (*http://www.nasn.org/*).

e. Implementing staff wellness programs that include health assessment, health promotion, and health management components.

f. Ensuring that school food service personnel are qualified and trained in the use of United States Department of Agriculture (USDA) guidelines for healthy eating.

g. Wherever food is served in school, make appealing foods available that are low in fat, sodium, and added sugars. Limit the sale and distribution of foods of minimal nutritional value. (*http://www.cdc.gov/nccdphp/dash/healthtopics/nutrition/guidelines/index.htm*)

h. Establishing a tobacco-free school environment that prohibits tobacco use on school property, in school vehicles, at school-sponsored events (on and off school property) for students, staff, and visitors, at all times in order to reduce potential exposure to those with asthma. Offer or refer students and staff to school- or community-based tobacco use cessation programs, targeting those who have diabetes or who live with persons with asthma. (*http://www.cdc.gov/nccdphp/dash/healthtopics/tobacco/guidelines/index.htm*)

i. Alleviating indoor air quality problems caused by allergens and irritants such as smoke, dust, mites, molds, warm-blooded animals, and cockroaches.

j. Establishing management and support systems for students with targeted health problems. Ensure communication and coordination among students, families, relevant school staff, and community health and mental health providers.

k. Coordinating school, family, and community efforts. Assist families to support a healthy lifestyle for their children and families. Link school efforts to community programs and activities.

l. Working with school-based and school-linked clinics, assist students and families in meeting their chronic disease-related health needs.

(e) Updated Community Action Plans

Within the first eight months, finalize a five-year community action plan, based on the guidelines of this announcement, the preliminary plan submitted with this application, input from the application review process, newly available community information, HHS agencies and other sources of technical support, and continuing discussions with the community consortium. Base your revised action plan on a logic model that serves as the foundation for prioritizing, planning, and budgeting interventions, program management, and program sustainability (See Attachment B for references regarding logic model development and use). Review and update the community action plan annually to reflect community needs, opportunities, resources, and program evaluation findings.

(f) Project Monitoring and Evaluation

i. *Risk Factor Surveillance.* Work with the state health department and CDC to expand existing surveillance mechanisms to collect representative Behavioral Risk Factor Surveillance System (BRFSS) baseline data for 1,500 to 2,000 adults within the intervention area, and repeat such assessments on an annual basis. (*http://www.cdc.gov/brfss/*)

Work with the state education agency and CDC to collect representative baseline data from the Youth Risk Behavior Surveillance System (YRBSS) (including, at a minimum, information on nutrition, physical activity, asthma, and tobacco) for 1,500 to 2,000 middle and/or high school students within the intervention area, and repeat such assessments on at least a biennial basis. (*http://www.cdc.gov/nccdphp/dash/yrbs/about_yrbss.htm*)

ii. *Existing Data Sources.* Identify existing data sources that can be used to design and monitor STEPS interventions, including hospital discharge data; medical care practice data; vital statistics data; Women, Infants, and Children (WIC) data; community health centers data; Medicaid and Medicare data; school data such absentee rates, academic, health, and risk information; and other sources of information about individual, group, or community health status, needs, and resources.

iii. *Common Performance Measures.* STEPS recipients will participate in establishing a common set of core performance measures to track the number and types of persons served by various intervention strategies and the achievement of related short-term, intermediate, and long-term outcomes. Recipients must agree to collect and report on core performance measures using standardized methodology to document how intervention strategies are being implemented and are successfully addressing STEP priorities. Performance goals should show the link between program activities and the achievement of the initiative's overarching goals. See Attachment A for selected ''Healthy People 2010'' objectives that are anticipated to form part of the core performance measures.

iv. *Comprehensive Evaluation Plan.* Agree to participate fully in a STEPS-wide independent, external evaluation to examine and document the effectiveness of this cooperative agreement program. An important mechanism for changing behavior and implementing effective practices in a variety of settings is the ability to examine and act on successes, barriers to success, and failures. The recipients are expected to be full partners in the evaluation of this initiative by actively gathering and submitting data on selected outcome and performance measures. Grantees will also participate in other evaluation activities that may include regular debriefings, descriptive case studies, special analyses, and mid-course adjustments.

v. *Data-Based Decision Making.* Projects are expected to use all the information above, in consultation with their Project Officer, to design and modify intervention strategies and the community action plan; revise budgets and subcontracts; request technical assistance from HHS agencies and/or contracted experts; recruit new members to the consortium; and/or change the structure of the consortium to improve project participation and outcomes.

(g) Information Sharing

Actively promote the sharing of experiences, strategies, and results with both funded and unfunded cities, communities, and interested partners. Ensure effective, timely communication and exchange of information, experiences, and results through the use of the internet; management information systems; other electronic approaches and formats; workshops; site visits to and between communities and cities; and other activities.

2. Tribal Recipient Activities

Recipient activities are the same as the activities outlined under sections E.1. (a) through (g) for Large Cities and Urban Communities.

3. State-Coordinated Small City and Rural Community Recipient Activities

(a) State Fiduciary Responsibilities

i. *Lead Agency.* Establish the lead/fiduciary agency to be the state health department (its bona fide agent) or its equivalent as designated by the Governor.

ii. *Allocate Funds.* Allocate and disperse funds to communities, the state education agency, other key partners to implement recipient activities at the community level. Include adequate funds to participate fully in the substantial data collection and evaluation activities associated with this award.

iii. *Contract Services.* Contract for services, as needed, to accomplish the objectives of this program announcement.

iv. *Link Budget to Performance.* Provide integrated progress and financial reports that link the performance and expenditures of the communities and all key partners.

v. *Sustainability.* If funded for years three through five, engage in efforts that will sustain successful community programs on a long-term basis.

(b) Small City and Rural Community Responsibilities

Each of the two to four identified communities is expected, with state assistance, to assume the responsibilities identified under Large City and Urban Community Recipient Activities section E.1. (a) through (g).

(c) Leadership/Coordination/Management

In support of the communities, the state health department should establish and coordinate a State-Community Management Team, including participation from the funded communities, the state health department, education agency, Office of Rural Health, any city or large community that is funded within the state borders under this program announcement, and other key public and private sector partners.

i. *Coordinate community objectives with state health plans.* Ensure that, community, and city objectives, activities, and interventions are consistent with, and are supportive of state plans and activities for the prevention and control of diabetes, asthma, and obesity.

ii. *Collaboration.* Ensure collaboration between the community and city programs funded under this program announcement and other state and local chronic disease prevention and control programs.

iii. *Project Staff.* Establish and maintain project staff sufficient to provide oversight and technical assistance to the funded communities.

(d) Technical Assistance

The state health department and state education agency should provide or facilitate the provision of technical assistance, consultation, and support to the funded communities in:

i. *Monitoring Disease Burden.* Defining and monitoring the burden of chronic diseases and disparities through surveillance, epidemiology, and existing data sources (*e.g.,* vital statistics, hospital discharge data, WIC data, community health centers data, Health Centers Uniform Data System, Medicaid and Medicare data).

ii. *Risk Factor Surveillance.* Working with participating communities and other interested parties, ensure that surveillance mechanisms are in place to monitor changes in risk factors (*e.g.,* BRFSS & YRBSS).

iii. *Program Evaluation.* Work with funded communities on on-going evaluation, including assessing the effectiveness of, targeting of, number of persons reached by, and use of intervention strategies; tracking the accomplishment of activities and the achievement of short-term and intermediate outcomes; monitoring changes in health outcomes; tracking performance in relationship to budget execution; and using program evaluation findings to adjust plans and strengthen the program.

iv. *Evidence-Based Practices.* Accessing and sharing with funded communities current prevention effectiveness, intervention effectiveness, and other research and program evaluation findings. Identifying and sharing promising practices.

v. *Community Support.* Helping to build community engagement, mobilization, ownership, and organization.

vi. *Intervention Selection and Development.* Identifying, recommending, and adapting, evidence-based intervention strategies consistent with the needs, cultures, and resources of the communities.

vii. *Resource Development.* Promoting public and private resource development in support of community-based intervention strategies and long-term sustainability.

(e) Project Monitoring and Evaluation

The state health department should work with each of the selected communities to ensure that surveillance mechanisms collect representative data for program planning and monitoring. Obtain existing and new data sources to better understand the burden and trends of chronic diseases, and associated risk factors, and the effects of the STEPS program.

(f) Information Sharing

The state health department should actively promote the sharing of experiences, strategies, and results among communities and cities within the state, between states funded under this program announcement, and with other interested communities. Support community efforts by ensuring effective, timely communication and exchange of information, experiences, and results through the use of the internet; management information systems; other electronic approaches and formats; workshops; site visits to and between communities and cities; and other activities.

4. HHS Activities

(a) Leadership and Coordination

i. *HHS Prevention Steering Committee.* An HHS Prevention Steering Committee has been established to coordinate and organize the ''Steps to a HealthierUS'' initiative and is comprised of high-level representatives of relevant HHS agencies and offices. The Committee will provide ongoing policy oversight and direction to STEPS and will coordinate technical assistance from each agency in support of the successful achievement of the purposes and performance objectives of this program announcement.

ii. *STEPS workgroup.* A STEPS workgroup comprised of representatives from funded communities, cities, tribes and states will be established and coordinated by the HHS Prevention Steering Committee in collaboration with the National Association of City and Community Health Officers, the Association of State and Territorial Health Officials, the National Association of Community Health Centers, the Association of Maternal and Child Health Programs, and other public health leadership organizations to:

a. Ensure collaboration between the recipients and their key partners funded under this program announcement and other local and state chronic disease prevention and control programs.

b. Anticipate the priority needs of recipients and prepare to meet these needs on a timely basis so that STEPS is implemented efficiently and successfully.

c. Assist in organizing and facilitating approaches to sharing experiences, lessons learned, results, and resources among recipients and existing community and state local chronic disease programs.

d. Make available the expertise, staff, and evidence-based resources of HHS agencies to assist and enhance the work of funded communities, states, and tribes.

iii. In concert with all of the HHS activities planned in support of STEPS, the Indian Health Service will provide additional coordination and assistance to the tribe funded under this announcement.

(b) Technical Assistance

Provide technical assistance, training, and support to funded projects in the areas of surveillance and epidemiology, community assessment and planning, evidence-based interventions, community mobilization and partnership development, monitoring of program performance outcomes, data management, program sustainability, and other areas as needed. Provide on-site assistance, workshops, webforums, training and intervention materials.

(c) Evaluation Oversight and Coordination

HHS will separately fund and direct an independent, external evaluation of STEPS. However, recipients are expected to budget for their full participation in the data collection associated with this external review. Additionally, HHS will coordinate cross-site evaluation activities, including the establishment of core performance measures. HHS will provide, or ensure the provision of, expert resources to assist communities, states and tribes in the design, collection, analysis, and use of comparable evaluation data for evaluating and strengthening their programs.

F. Content

Letter of Intent (LOI)

An LOI is requested from all potential applicants for the purpose of planning the competitive review process. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. LOIs should include the following information: (1) The program announcement title and number; (2) whether the application will be from a Large City and Urban Community applicant, a Tribal applicant, or a State-Coordinated Small City and Rural Community applicant; and (3) the name of the applicant agency or organization, the official contact person and that person's telephone

number, fax number, mailing and e-mail addresses. If the LOI is being sent from a Large City and Urban Community applicant, also provide the exact boundaries and total population size of the contiguous geographic area with population exceeding 400,000 persons that qualifies the applicant as eligible for this program announcement.

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow this guidance carefully. Content requirements for Large City and Urban Community applicants are listed under number 1 below; for Tribal applicants under number 2 below; and for State-Coordinated Small City and Rural Community applicants under number 3 below:

1. Large City and Urban Community Applicants

The narrative (excluding appendices) must be no more than 50 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

(a) Official Transmittal Letter. Letter of transmittal from the Chief Executive Officer (Mayor, county executive, or other equivalent governmental official) committing local government support, identifying the lead agency (local health department, bona fide agent, or equivalent) and citing the amount requested.

(b) Table of Contents. Table of Contents with page numbers for each of the following sections.

(c) Executive Summary. Executive summary briefly describing the overall project, intervention area and population size, partnerships, intervention strategies, and major short-term and intermediate outcomes.

(d) Lead Agency. Description of the lead agency, including fiduciary and programmatic capabilities, as well as an inventory of current agency activities related to this announcement.

(e) Intervention Area. Description of the intervention area, including its demographic, geographic and political boundaries, target populations to receive special focus under this award, as well as evidence of the burden of disease, disparities in diabetes, asthma, obesity, associated risk factors, and access to and use of proven prevention and control interventions. Description of current activities and projects underway to address chronic diseases in the intervention area. Overview of the assets and deficiencies of the intervention area, including state, local, and private sector efforts, and a description of findings from any community assessments or asset mapping done in the past three years.

(f) Staff. Description of the proposed STEPS staff, including resumes or job descriptions for the full-time project coordinator and other key staff, the qualifications and responsibilities of each staff member and the percent of time each are committing to STEPS.

(g) Community. Description of the community consortium, including a list of key partners, and documentation of their capabilities; their commitment to specific functions, responsibilities, and resources; and evidence of prior successful collaborations. The structure, decision-making processes, and methods for accountability of the members should be described as well as how coordination and linkage with existing programs and interventions with similar focus will be maintained.

(h) Community Action Plan. A preliminary five-year community action plan that includes the community and school interventions to be employed in the intervention area. The community action plan should include time-phased, specific, measurable, and realistic short-term and intermediate outcomes based on the needs of the community and gaps in current prevention and control activities. The community action plan should identify likely approaches, strategies, and interventions to be used over the entire five-year project period to address nutrition, physical activity, and tobacco use and exposure as well as additional interventions to address the targeted STEPS chronic diseases/conditions. The organizations responsible for the interventions should be clearly identified as well as the target populations to be addressed. The community action plan should address first year activities in depth and their relationship to attaining specific short-term and intermediate outcomes. The community action plan should include a plan to ensure long-term sustainability of project efforts and outcomes.

(i) Financial Contributions. Description of financial and in-kind resources, if any, that will be contributed toward activities initiated as part of STEPS.

(j) Evaluation and Monitoring. A plan for data identification, collection, and use for program planning and monitoring. Describe efforts to obtain existing and new data sources to better understand chronic disease burden and trends, related risk factors and the effects of STEPS. Provide specific assurances to track common performance measures and participate fully in an independent, external evaluation of STEPS processes and outcomes. Performance goals should directly link program activities to the achievement of the initiative's overarching goals. Describe how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(k) Communications Plan. A plan to communicate and share information with the members of the consortium, the community, and other key partners. The plan should describe the proposed exchange of information, the means and proposed timing of communication, with an emphasis on communications innovations such as electronic formats, management information systems, webforums, etc.

(l) Budget and Budget Justification/Narrative. i. *Allocate Budget.* Clearly indicate estimated budget amounts to be allocated and dispersed to the local education agency or agencies and other key consortium members. Provide a description of the funding mechanisms and timelines that will be used to disperse these funds.

ii. *One-Year and Five-Year Budgets.* In support of the five-year community action plan, provide both a detailed budget and budget justification/narrative for the first budget year, and a budget estimate for budget years two through five.

a. Provide a detailed budget for the first budget year in support of each activity that must be completed in the first year of program operations to accomplish the short-term and intermediate outcomes specified in the five-year community action plan. Develop a budget justification and narrative that describes all requested funds by object class category: personnel, fringe benefits, travel, equipment, supplies, contractual, and other direct costs. As part of the request for travel funds in FY 2003, applicants should budget for two trips to workshops and/or conferences for key staff members of the lead/fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Summarize all of the first-year requested funds in the form included in Attachment D, Activity-Based Plan and Budget. This information must be consistent with the first year budget information entered in Section B of Standard Form 424A

(Budget Information—Non-Construction Programs).

b. Provide estimated budgets for FY 2004 through FY 2007 that are linked to the accomplishment of intermediate outcomes. For each budget year, include budget estimates for two trips to workshops and/or conferences for key staff members of the lead/ fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Provide budget estimates for each year for each object class category in Section B of a separate Standard Form 424A (Budget Information—Non-Construction Programs).

(m) Letters of Support. Provide letters of support and Memoranda of Understanding (as appropriate) from the local health agencies, local Education Agency or agencies, Health Center Networks or Primary Care Associations and other key members of the consortium that specify their roles, responsibilities, and resources.

2. Tribal Applicants

The narrative (excluding appendices) should be no more than 50 pages double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

(a) Official Transmittal Letter. Letter of transmittal from the Principal Tribal elected official or the chief executive officer of the Tribe, Inter-Tribal Council, Urban Indian Organization, or Regional Area Indian Health Board identifying the lead agency and citing the amount requested.

(b) Narrative Content. The remainder of the narrative should address the content described under F.1. b) through m) above for Large Cities and Urban Communities.

3. State-Coordinated Small City and Rural Community Applicants

The narrative (excluding appendices) should be no more than 100 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

(a) Official Transmittal Letter. Letter of transmittal from the Governor committing state support, identifying the lead agency (state health department, bona fide agent, or equivalent) and citing the amount requested.

(b) Table of Contents. Table of Contents with page numbers for each of the following sections.

(c) Executive Summary. Executive Summary briefly describing the overall project; intervention area(s) and population sizes; partnerships, intervention strategies, and major short-term and intermediate outcomes.

(d) State Lead Agency. Description of the lead agency including fiduciary and programmatic capabilities, as well as an inventory of current agency activities related to this announcement. Description of the state health department's ability to provide, and history of providing, expert assistance to local communities in the design and delivery of evidence-based approaches to chronic disease prevention and control.

(e) Community Lead Agencies. Description of the lead agency (local health department or equivalent) for each of two to four separate community intervention areas, including fiduciary and programmatic capabilities, as well as an inventory of current agency activities related to this announcement.

(f) Intervention Areas. Description of each of the community intervention areas, including their demographic, geographic and political boundaries, target populations to receive special focus under this award, as well as evidence of the burden of disease, and disparities in diabetes, asthma, obesity, associated risk factors, and access to and use of proven prevention and control interventions. Description of current state, local, and private-sector activities underway to address chronic diseases in the intervention areas. Overview of the assets and deficiencies of the intervention areas including a description of findings from any community assessments or asset mapping done in the past three years.

(g) Staffing. Description of the proposed STEPS staff including resumes or job descriptions for full-time project coordinators in each community and other key staff at the state and community levels, the qualifications and responsibilities of each staff member and percent of time each is committing to STEPS.

(h) Community Consortia. Description of the community consortia for each community including a list of key partners and documentation of their capabilities; their commitment to specific functions, responsibilities, and resources; and evidence of prior successful collaborations. The structure, decision-making processes, and methods for accountability of the members should be described as well as how coordination and linkage with existing programs and interventions with similar focus will be maintained.

(i) Community Action Plans. A preliminary five-year community action plan for each community that includes the community and school interventions to be employed in the intervention areas. The community action plans should include time-phased, specific, measurable, and realistic short-term and intermediate outcomes that are based on the needs of the communities and gaps in current prevention and control activities. The community action plans should identify likely approaches, strategies, and interventions to be used over the entire five-year project period to address nutrition, physical activity, and tobacco use and exposure as well as additional interventions to address the STEPS chronic diseases/conditions (asthma, diabetes, and obesity). The organizations responsible for the interventions should be clearly identified as well as the target populations to be addressed. The community action plan should address first year activities in depth and their relationship to attaining specific short-term and intermediate outcomes. The community action plan should include a plan to ensure long-term sustainability of project efforts and outcomes.

(j) Financial Contributions. Description of financial and in-kind resources that will be contributed toward new activities initiated as part of STEPS.

(k) Evaluation and Monitoring. A plan for data identification, collection, and use for program planning and monitoring for each community. Describe efforts to obtain existing and new data sources to better understand the burden and trends of chronic diseases and their risk factors and the effects of the STEPS program. Provide specific assurance from each community, and from the state, to track common performance measures and to participate fully in an independent, external evaluation of STEPS outcomes. Describe for each community how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(l) Communication Plans. A plan for each community to communicate and share information with the members of their consortia, other key partners, and their own communities broadly, as well as with other funded communities and the state. The plans should describe the proposed exchange of information, the proposed means and timing of communication, with an emphasis on communications innovations such as electronic formats, management information systems, webforums, etc.

(m) Budget and Budget Justification/Narrative i. *Community Funding.* Provide a description of how the state will distribute a minimum of 75 percent of total STEPS funds to the identified communities within four months of the receipt of their award.

ii. *Allocate Budget.* Clearly indicate estimated budget amounts to be allocated and dispersed to the funded communities, the State Education Agency, and other state partners. Provide a description of the funding mechanisms and timelines that will be used to disperse these funds.

iii. *One-Year and Five-Year Budgets.* In support of the five-year community action plans, provide a detailed budget and budget justification/narrative for the first budget year and a budget estimate for years two through five.

a. Provide a detailed budget for the first budget year in support of each activity that must be completed in the first year of program operations to accomplish the short-term and intermediate outcomes specified in the five-year community action plans. This detailed budget must include:

• *State expenditures.* A budget justification and narrative that describes all requested funds for the State Health and Education Agencies, and other key state partners by object class category: personnel, fringe benefits, travel, equipment, supplies, contractual, and other direct costs. State expenditures should clearly reflect activities that support the efforts of the funded communities. As part of the request for travel funds in FY 2003, applicants should budget for two trips to workshops and/or conferences for key staff members of the lead/fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Summarize all of the first-year state-level expenditures in the form included in Attachment D, Activity-Based Plan and Budget.

• *Community expenditures.* For each community, a budget justification and narrative that describe all requested funds for the local health department, the local education agency or agencies, and other key community partners by object class category in support of first-year activities in the five-year community action plan. As part of the request for travel funds in FY 2003, applicants should budget for two trips to workshops and/or conferences for key community members. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Summarize all of the first-year requested funds, by community, in the form included in Attachment D, Activity-Based Plan and Budget Form.

• The information above should be consistent with the first year budget information entered in Section B of Standard Form 424A (Budget Information—-Non-Construction Programs).

b. Provide estimated budgets for FY 2004 through FY 2007 that are linked to the accomplishment of intermediate outcomes for each funded community. For each budget year, include budget estimates for two trips to workshops and/or conferences for key staff members of the lead/fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Provide the estimated total budget for each year (*i.e.,* state plus all funded communities) for each object class category in Section B of Standard Form 424A (Budget Information—-Non-Construction Programs).

(n) Letters of Support. Provide letters of support and Memoranda of Understanding (as appropriate) from the local health departments and education agencies, state education agency, and other key members of the consortia that specify their roles, responsibilities, and resources.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 1, 2003 submit the LOI to: Dr. Stephanie Zaza, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway E.E., Mailstop K–40, Atlanta, GA 30341.

Application Forms

Submit the signed original and two copies of the CDC 0.1246 form. Forms are available at: *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, please 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, July 15, 2003. Submit the application to: Technical Information Management—PA 03135, CDC Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

LOIs and applications shall be considered as meeting the deadline if they are received before 4:00 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 returned to the applicant. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

An Independent Objective Review Group appointed by HHS will evaluate each application against the following criteria. Evaluation criteria for Large City and Urban Communities are listed under number 1 below, for Tribes under number 2 below, and for State-Coordinated Small City and Rural Communities under number 3 below.

1. Large City and Urban Community Applicants

(a) Intervention Strategies (40 Points)

i. Community Interventions (30 of 40 points). a. The degree to which the applicant describes a five-year community action plan with objectives and activities that are specific, time-phased, measurable, realistic, and related to identified needs and gaps in existing programs, program requirements, and purposes and goals of this cooperative agreement program.

b. The degree to which the science-base for effective community interventions is being used to create the community action plan and its evaluation.

c. The likely effectiveness of each intervention strategy as well as the plan as a whole. This includes the estimated efficacy of each intervention based on existing science, the likely reach of each intervention (percentage of the

community likely to be engaged/impacted by the intervention), the extent to which interventions build on and complement, but do not duplicate, existing programs, and the potential synergy created through multiple interventions.

d. The degree to which the proposed plan addresses nutrition, physical activity, tobacco, and intervention strategies/activities to address the chronic diseases/conditions covered by STEPS (asthma, diabetes, and obesity).

e. The degree to which the plan reflects and builds on a substantiated and comprehensive understanding of the assets, attributes, and deficiencies of the communities including non-STEPS-related activities completed or on-going in these communities.

f. The extent to which the applicant includes a plan to sustain the project long term.

ii. School Interventions (10 of 40 points). a. The extent to which the applicant describes plans to implement school-based interventions that promote healthy lifestyles among students and their families, and address the prevention and control of chronic diseases within the same intervention area as the community interventions.

b. The clarity and feasibility of a plan to establish a full-time school health program coordinator and a school health council that will direct school-based activities and assist in their implementation.

c. The degree to which the science-base for effective school-based interventions is being used to create the community action plan and its evaluation.

d. The extent to which the proposed objectives and activities are specific, time-phased, measurable, realistic, feasible, and related to identified needs and gaps in existing programs, program requirements, and purposes and goals of this cooperative agreement program.

(b) Project Leadership and Management (20 Points)

i. The identification of a lead/fiduciary agency that will ensure accountability for expenditures in relationship to performance of all key partners.

ii. The extent to which the applicant describes the proposed structure of the project including decision-making processes.

iii. The extent to which the applicant provides letters of support and Memoranda of Understanding (as appropriate) with partner agencies and organizations, and the extent to which these documents describe specific collaborative actions to be undertaken and the role of the partners.

iv. The extent to which the applicant and its key partner organizations provide financial or in-kind contributions toward the success of the STEPS initiative.

v. The extent to which the applicant describes realistic plans to coordinate proposed activities with state- and community-level programs to prevent and control chronic disease.

vi. The degree to which proposed staff have the relevant background, expertise, qualifications, and experience.

vii. The degree to which the proposed staffing plan appears appropriate to the level of work proposed and demonstrates the intent to minimize staff levels in order to maximize funding for interventions.

viii. The extent to which the applicant describes clearly defined roles of project staff and an appropriate percent of time each is committing to STEPS.

(c) Plan for Project Monitoring and Evaluation (15 Points)

i. The extent to which the applicant describes plans to collaborate with other STEPS recipients in developing and implementing a set of common performance measures to monitor the success of funded projects.

ii. The extent to which appropriate data sources are currently available or will be made available, and are used to monitor and track changes in community capacity; the extent to which interventions reach populations at high risk; changes in risk factors, chronic disease burden, and disparities; the relationship between interventions and outcomes; and changes in program efficiency.

iii. The extent to which the applicant describes plans to collaborate fully in external, independently coordinated evaluation activities to evaluate the overall impact of STEPS.

iv. The extent to which evidence is provided to demonstrate the applicant's capability to conduct surveillance and program evaluation, access and analyze official data sources, and use evaluation to strengthen the program.

v. The extent to which the applicant describes how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(d) Background and Need (10 Points)

i. The extent to which the proposed intervention area is described, including the populations to be served.

ii. The extent to which data are provided substantiating existing burden and/or disparities of chronic diseases and conditions, specifically diabetes, asthma, and obesity in the proposed intervention area and populations to be served.

iii. The extent to which data are provided substantiating existing health risk behaviors and risk factors related to chronic diseases in the proposed intervention area and populations to be served.

iv. The extent to which assets and barriers to successful program implementation are identified.

v. The extent to which existing resources will be utilized to complement or contribute to the effort planned in the proposal.

(e) Community Consortium (10 Points)

i. The extent to which the applicant demonstrates the ability to establish a consortium that is inclusive of key partners, and related coalitions.

ii. The extent to which the applicant describes the capacity of the proposed consortium in terms of leadership, expertise, community representation, collaborative experience/abilities, and agency representation.

iii. The extent to which key partners demonstrate a high-level commitment to planning, implementing, and evaluating the proposed project, including a commitment of staff and other resources.

iv. The extent to which members of the proposed consortia have successfully worked together or with others in the past to achieve improved health outcomes.

(f) Communication and Information Sharing (5 Points)

i. The extent to which the applicant describes plans to share experiences, strategies, and results with other interested states, communities, and partners.

ii. The extent to which the applicant describes plans to ensure effective and timely communication and exchange of information, experiences and results through mechanisms such as the internet, management information systems, other electronic formats, workshops, publications, and other innovations.

(g) Budget (not scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

2. Tribal Applicants

Will be evaluated according to the Large City and Urban Community evaluation criteria listed under H.1. (a) through (g) above.

3. State-Coordinated Small City and Rural Community Applicants

(a) Intervention Strategies (40 Points)

The points for this section will be divided equally between the two to four pre-selected communities where project activities and interventions will occur (*i.e.*, 20 points per community if the project proposes to work in two communities, 13 points per community if three communities, ten points per community if four communities). This section will be evaluated according to the same criteria for Large City and Urban Community proposals under H.1.a) (i-ii) above.

(b) Project Leadership, Collaboration, and Proposed Structure (15 Points)

i. The identification of a lead/fiduciary agency that will ensure accountability for expenditures in relationship to performance of all key partners.

ii. The extent to which the applicant describes the proposed structure of the project including decision-making processes, monitoring, problem solving, and providing support to community-based programs.

iii. The extent to which the applicant provides letters of support and Memoranda of Understanding (as appropriate) with partner agencies and organizations, and the extent to which these documents describe specific collaborative actions to be undertaken and the role, responsibilities, and commitment of resources of the partners.

iv. The extent to which the applicant and its key partner organizations provide financial or in-kind contributions toward the success of the STEPS initiative.

v. The extent to which the applicant describes realistic plans to coordinate proposed activities with state- and community-level programs to prevent and control chronic disease.

vi. The degree to which proposed staff have the relevant background, qualifications, and experience to facilitate support to community-level efforts.

vii. The degree to which the proposed staffing plan appears appropriate to the level of work proposed and demonstrates the intent to minimize staff levels in order to maximize funding for interventions.

viii. The extent to which the applicant describes clearly defined roles of project staff and an appropriate percent time each is committing to STEPS.

ix. The capacity of the proposed local consortia in terms of leadership, expertise, community representation, collaborative experience/abilities, and agency representation.

x. Past history and evidence of effectiveness of community-state partnerships in relation to health issues and interventions (especially those related to chronic disease prevention and control, and those involving the specific communities selected for this program).

xi. Past history and evidence of effectiveness of community partnerships in the two to four proposed communities in relation to health issues and interventions (especially those involving chronic disease prevention and control).

(c) Plan for Project Monitoring and Evaluation (15 Points)

i. The extent to which the applicant describes plans for the state and proposed communities to collaborate with other STEPS recipients in developing and implementing a set of common performance measures to monitor the success of funded projects.

ii. The extent to which appropriate data sources are currently available or will be made available to monitor and track changes in community capacity; the extent to which community-driven interventions reach populations at high risk; changes in risk factors, chronic disease burden, and disparities; the relationship between interventions and outcomes; and changes in program efficiency.

iii. The extent to which the applicant describes plans for the state, proposed communities, and other key partners to collaborate fully in external, independently coordinated evaluation activities to evaluate the overall impact of STEPS.

iv. The extent to which evidence is provided to demonstrate the applicant's capability to conduct surveillance and program evaluation, access and analyze official data sources, and use evaluation to strengthen the program and support community-based efforts.

v. The extent to which the applicant describes how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(d) Capacity to Guide and Support Intervention Communities (15 Points)

i. The extent to which the applicant proposes a State-Community Management Team fully capable of guiding and directing the overall project.

ii. The extent of state experience, expertise, and capacity to assist local communities in the activities of this project are described. Evidence of having provided guidance and support to local communities that resulted in successful implementation and outcomes.

iii. The extent to which specific methods are described to assist local communities in the activities of this project.

(e) Background and Need (10 Points)

i. The extent to which the proposed intervention communities are described, including the populations to be served.

ii. The extent to which data are provided substantiating the burden and disparities of chronic diseases and conditions, specifically diabetes, asthma, and obesity in the proposed intervention communities and populations to be served.

iii. The extent to which data are provided substantiating health risk behaviors and risk factors related to chronic diseases in the proposed intervention communities and populations to be served.

iv. The extent to which assets and barriers to successful program implementation are identified in each intervention community.

v. The extent to which existing resources will be utilized to complement or contribute to the effort planned in the proposal.

(f) Communication and Information Sharing (5 Points)

i. The extent to which the applicant describes plans to share experiences, strategies, and results between the proposed communities, with the state, and with other interested communities and partners.

ii. The extent to which the applicant describes plans to ensure effective and timely communication and exchange of information, experiences, and results between the proposed communities, the state, and others through mechanisms such as the internet, managements information systems, other electronic formats, workshops, and other innovations.

(g) Budget (Not Scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original and two copies of:

1. Interim progress report will be due May 30, 2004, and subsequent interim progress reports will be due on the 30th of May each year through May 30, 2008. The progress report will serve as the

non-competing continuation application for the subsequent year, and must contain the following elements:

(a) A succinct description of the program accomplishments/narrative and progress made in achieving short-term and intermediate outcomes and other performance measures within the planned budget during the first six months of the budget period.

(b) The reason(s) for not achieving established short-term and intermediate outcomes and other performance measures within the planned budget and what will be done to achieve unmet objectives.

(c) Current budget period financial progress.

(d) New budget period proposed program activities and objectives.

(e)Detailed changes in the activity-based budget, the line-item budget, existing contracts, summary budget, and budget justification.

(f)For newly proposed contracts, provide the name of the contractor(s), method of selection, period of performance, scope of work, and itemized budget and budget justification/narrative.

2. An annual progress report summarizing the budget period (12 month) accomplishments for each budget period objective. The annual progress report will be due on November 20, 2004 and subsequent annual progress reports will be due on the 20th of November each year through November 20, 2007.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial, performance, and evaluation reports, no more than 90 days after the end of the five-year 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–7—Executive Order 12372 Review
AR–8—Public Health Systems Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobby Restrictions

J. Where To Obtain Additional Information

A live, interactive satellite broadcast and webcast about this announcement and the STEPS Program will be held on May 22, 2003, from 1 to 3 pm Eastern Standard Time. After May 1, 2003, updates about this broadcast and participation information may be found at *http://www.phppo.cdc.gov/phtn.*

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., Room 3000, Atlanta, GA 30341–2700, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ms. Sylvia Dawson, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2771, E-mail address: *snd8@cdc.gov.*

For business management and budget assistance, in the territories contact: Charlotte Flitcraft, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2632, Email address: *caf5@cdc.gov.*

For program technical assistance, contact: Dr. Stephanie Zaza, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop K–40, Atlanta, GA 30341, Telephone: 770–488–6452, E-mail address: *sxz2@cdc.gov.*

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10986 Filed 5–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): 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 meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., June 2, 2003. 8:30 a.m.–4 p.m., June 3, 2003.

Place: Centers for Disease Control and Prevention, Building 17, Rooms 1039/1041, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and

(3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals); infection control issues related to Severe Acute Respiratory Syndrome (SARS); strategies for prevention of surgical site infections; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

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: May 2, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11533 Filed 5–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0169]

Dental Amalgam; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for interested persons to provide information for a scientific literature review related to the health effects of dental amalgam in humans. Over the years there has been concern about the safe use of dental amalgam because of the presence of mercury. FDA is publishing this notice to gather recommendations from the scientific and lay communities about peer-reviewed journal articles from 1996 to 2002 that address human health risks from dental amalgam.

DATES: Submit information by June 2, 2003.

ADDRESSES: Submit written information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic information to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION: Dental amalgam has been in use as a restorative material for approximately 150 years. It consists of an alloy of powdered silver, tin, copper and sometimes smaller amounts of zinc, palladium, or indium. Elemental liquid mercury holds these powders together. There has been concern about the safety of dental amalgam because of its mercury content. In 1993, to address this concern, the Subcommittee on Risk Management of the Committee to Coordinate Environmental Health and Related Programs of the Public Health Service (PHS) completed a major review of the scientific literature on the use and safety of dental amalgam.

The review concluded that there was no evidence that dental amalgam posed a serious health risk in humans except in the very few instances of localized allergic reactions. The World Health Organization as well as the Working Group on Dental Amalgam of the Environmental Health Policy Committee of the PHS reaffirmed this conclusion.

In 1997, the Working Group on Dental Amalgam, with input from a broad cross-section of scientists and dental professionals, issued a joint report. This report indicated that the current body of literature through 1997 does not support claims that individuals with dental amalgam restorations will experience adverse effects, except for rare allergic or hypersensitivity reactions. Adverse effects include neurological, renal, or developmental effects.

There was a review of the peer-reviewed scientific literature on studies of the health effects of dental amalgam in 1993 and 1998. A current review, covering the literature from 1996 through 2002, is in the planning stages. The National Institute of Dental and Craniofacial Research in conjunction with the Centers for Disease Control and Prevention and FDA are sponsoring the review. The purpose of the review is to determine whether any studies published in the peer-reviewed, scientific literature provide new evidence related to the health effects of dental amalgam in humans. An independent group will conduct the review in the latter part of 2003.

The review will include articles from standard bibliometric databases as well as suggestions from the scientific and lay communities.

Scientific and lay communities should provide the following information to recommend an article for consideration:

- Name(s) of author(s),
- Complete title of article,
- Name of peer-reviewed journal,
- Year of publication,
- Volume number of journal,
- Page numbers of article.

Recommended articles should shed light on the possible health effects of dental amalgam in humans. Articles published in peer-reviewed journals should be from the time period between January 1, 1996, and June 1, 2003.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic information regarding this document. Submit a single copy of electronic information or two paper copies of any mailed information, except individuals may submit one paper copy. Information is to be identified with the docket number found in brackets in the heading of this document. Any received information may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–11648 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03F–0182]

Food Steris Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Steris Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation for the control of microbial contamination on dietary supplements up to a maximum absorbed dose of 30 kiloGray (kGy).

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3032.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2M4741) has been filed by Steris Corp., P.O. Box 147, St. Louis, MO 63166. The petition proposes that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for the control of microbial contamination on dietary supplements, and ingredients used in the manufacture of dietary supplements, up to a maximum absorbed dose of 30 kGy.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 16, 2003.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–11496 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Sixth Annual FDA–Orange County Regulatory Affairs (OCRA) Educational Conference ''FDA and OCRA: Understanding the Changing Landscape''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing its sixth annual educational conference entitled ''FDA and OCRA: Understanding the Changing Landscape'' cosponsored with OCRA. The conference is intended to provide the drug, device and biologics industries with an opportunity to interact with FDA reviewers and compliance officers from FDA's centers and district offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive questions and answer, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The meeting will be held on June 4 and 5, 2003, from 7:30 a.m. to 5 p.m.

Location: The meeting will be held at The Irvine Marriott, 18000 Von Karman Ave., Irvine, CA.

Contact: Ramlah Oma, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7611, FAX 949–798–7656, or OCRA, Attention to detail (ATD), 111 East Avenida San Gabriel, San Clemente, CA 92672, 949–366–1056, FAX 949–366–1057, Web site: http://www.ocra-dg.org. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**.)

Registration and Meeting Information: See OCRA Web site at http://www.ocra-dg.org. Contact ATD at 949–366–1056.

Before May 20, 2003, registration fees are as follows: $425.00 for members, $500.00 for nonmembers, and $275.00 for FDA/government/full-time students with proper identification. After May 20, 2003, $495.00 for members, $575.00 for nonmembers, and $325.00 for FDA/government/full-time students with proper identification.

If you need special accommodations due to a disability, please contact Ramlah Oma at least 10 days in advance.

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11651 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 16, 2003, from 8 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: petersonj@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 16, 2003, the committee will discuss the white blood cell (WBC) monitoring schedule for patients being treated long-term with clozapine. Currently, the WBC monitoring schedule is weekly for the first 6 months of continuous therapy and biweekly thereafter. The committee will consider the question of whether the frequency of WBC monitoring can be diminished further following some period of biweekly monitoring. When available, background materials for this meeting will be posted 1-business day prior to the meeting on the FDA Web site at: www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2003 and scroll down to Psychopharmacologic Drugs Advisory Committee.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 9, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jayne Peterson at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 5, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–11649 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0528]

Risk Management; Public Workshop; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until May 30, 2003, the comment period for three concept papers entitled ''Premarketing Risk Assessment,'' ''Risk Management Programs,'' and ''Risk Assessment of Observational Data: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment.'' The document that requested public input, review, and comments for the three concept papers was published in

the **Federal Register** of March 7, 2003 (68 FR 11120). The agency is taking this action in response to informal requests for an extension of the comment period.

DATES: Submit written or electronic comments on the concept papers by May 30, 2003.

ADDRESSES: Submit written requests for single copies of the concept paper(s) to Lee Lemley, Executive Operations Staff (HFD–006), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the concept papers.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: *FDADockets@oc.fda.gov*, or on the Internet at *http://accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*.

FOR FURTHER INFORMATION CONTACT: Lee Lemley, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6218, *lemleyl@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 7, 2003 (68 FR 11120), FDA published a document announcing a public workshop to discuss risk management activities for drug and biological products (excluding blood products other than plasma derivatives). The public workshop was held, as scheduled, on April 9, 10, and 11, 2003. To facilitate public input and discussion, FDA simultaneously had issued three concept papers for review and comment entitled: (1) ''Premarketing Risk Assessment,'' (2) ''Risk Management Programs,'' and (3) ''Risk Assessment of Observational Data: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment.'' Interested persons were given until April 30, 2003, to submit written or electronic comments on the concept papers. In response to informal requests from interested persons for additional time to submit comments on the concept papers, FDA has decided to reopen the comment period until May 30, 2003.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the concept papers. You should annotate and organize your comments to identify the specific concept paper and issue to which the comments refer. Where possible, comments should reference line numbers in the concept papers. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The concept papers and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

III. Electronic Access

Electronic versions of the concept papers are available via the Internet at *http://www.fda.gov/cder/meeting/riskmanagement.htm*.

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11497 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Advisory Board to the National Center for Toxicological Research; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

General Function of the Committee: The Board advises the Director, NCTR, in establishing, implementing, and evaluating the research programs that assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides an extra-agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

Date and Time: The meeting will be held on June 19, 2003, from 9 a.m. to 4:45 p.m. and on June 20, 2003, from 9 a.m. to 12:15 p.m.

Location: NCTR, Building #12, Conference Center, 3900 NCTR Dr., Jefferson, AR 72079.

Contact Person: Leonard M. Schechtman, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will be presented with a draft report on the evaluation of the Division of Biometry. The draft report is the product of a site visit team that conducted an onsite review of the Division in May. Division staffers will provide a preliminary response to the issues raised and recommendations made.

The establishment of a Pharmaceutical Safety Working Group and the background and history of two Expert Working Groups (EWG) will be discussed. A proposal to move oversight for the EWGs from the Center for Drug Evaluation and Research (CDER) to NCTR will also be reviewed. Representatives from CDER and industry will present perspectives on the proposed change in oversight. An earlier version of this proposal was discussed at the June 2001 and August 2002 meetings of the SAB. The Board will also receive updates on the activities of the Cardiotoxicity and Vascular Injury EWGs.

Procedure: On June 19, 2003, from 9 a.m. to 4:45 p.m., and June 20, 2003, from 9 a.m. to 11:45 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 6, 2003. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:45 a.m., on June 20, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 20, 2003, from 11:45 a.m. to 12:15 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the

agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard M. Schechtman at least 14 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 3, 2003.

Peter J. Pitts

Associate Commissioner for External Relations.

[FR Doc. 03–11605 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0077]

FDA Modernization Act of 1997; Modifications to the List of Recognized Standards, Recognition List Number: 008; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 28, 2003 (68 FR 22391). The document announced a publication entitled ''FDA Modernization Act of 1997; Modifications to the List of Recognized Standards, Recognition List Number; 008.'' The publication contains modifications the agency is making to the list of standards FDA recognizes for use in the premarket reviews. The document published with an inadvertent error. This document corrects that error.

DATES: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–10417, appearing on page 22397 in the **Federal Register** of Monday, April 28, 2003, the following correction is made:

On page 22397, the section heading ''IV. Listing of New Entries'' is corrected to read ''III. Listing of New Entries.''

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11498 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 2003 Competitive Application Cycle for the Black Lung Clinics Program (BLCP) CFDA Number 93.965; HRSA–03–086

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of up to $250,000 to support one grant project to an eligible entity for the purpose of carrying out a program to seek out and provide services to active and inactive miners, in southwest Indiana, who were exposed to coal dust as a result of employment. The former grantee in southwest Indiana relinquished the grant on September 23, 2002. As a result, an interim grantee was identified. The project period for the interim grantee ends on June 30, 2003. Eligible entities are expected to provide services described below in ''Program Expectations. The Bureau of Primary Health Care (BPHC) intends to fund no more than one award.

Authorizing Legislation: The Black Lung Clinics Program (BLCP) was authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977 (Pub. L. 95–239), in order to provide treatment and rehabilitation for individuals who currently or formerly worked within a coal or other mining industry and, as a result, were exposed to coal dust. It provides the authority for competitive grants to States, private, or public entities to provide the services listed below in ''Program Expectations'' to the population described above. Services may be provided either directly or through formal arrangements with appropriate health care providers. The implementing regulations for the BLCP may be found at 42 CFR part 55a.

DATES: The intended timeline for application submission, review and award are as follows: June 13, 2003, application deadline; July 31, 2003, grant awards announced.

Applications will be considered on time if they are: (1) Received on or before the established deadline date; or (2) postmarked on or before the deadline date given in the **Federal Register** notice. Late applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications sent to any address other than that specified below are subject to being returned. Applicants will receive notification of their application receipt. Electronic submission is not available for this program announcement.

Application Requests: To receive a complete application kit (*i.e.,* application instructions, necessary forms, and application review criteria), contact the HRSA Grants Application Center at:

HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. Phone: 1–877–HRSA–123 (1–877–477–2123). Fax: 1–877–HRSA–345 (1–877–477–2345). E-mail: *hrsagac@hrsa.gov.*

When contacting the HRSA Grants Application Center (GAC) please use the following program announcement when requesting application materials: HRSA–03–086. Applications must be submitted to the HRSA GAC. Applicants should note that beginning April 1, 2003, HRSA will begin accepting grant applications online. Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information. Applications *must be postmarked* by the due date as specified above for each program area.

Eligible Applicants: The following entities are eligible to apply for the funds described in this notice:

- Any State, private, or public entities, including faith-based and community-based organizations, proposing to serve miners or coal miners, in southwest Indiana, exposed to coal dust as a result of employment.

Program Expectations: The purpose of the BLCP is to improve the health status of miners or coal miners exposed to coal dust as a result of employment and to increase coordination with other services and benefits programs to meet the health-related needs of this population.

The following is a list of core services that must be provided by all grantees:

- Primary care, including screening, diagnosis, treatment, and rehabilitation
- Patient and family education and counseling
- Outreach

• Patient care coordination, including individual patient care plans for all patients, and referrals, as indicated

• Antismoking advice

• Other symptomatic treatments, including pulmonary rehabilitation

• The applicant must provide services in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases. In addition, the applicant must meet all criteria for approval and designation by the Department of Labor under 20 CFR part 725 to perform disability examination and provide treatment under the Federal Mine Safety and Health Act of 1977, as amended. All services must be provided regardless of a person's ability to pay. Grants funds under this program must supplement and not supplant existing services of the grantee.

Matching or Cost Sharing Requirement: Matching in not required, however, cost participation is encouraged.

Application Review and Funding Criteria: Each application submitted by the deadline will be reviewed initially for eligibility. Those applications that are determined to be ineligible, incomplete or non-responsive will be returned to the applicant without further consideration. Those applications that are determined to be eligible will be reviewed by a panel of reviewers comprised of non-Federal experts using the following objective review criteria:

• Need and Readiness—the extent to which the applicant can demonstrate a need for these services in their area and their readiness to provide them.

• Administration—the extent to which the applicant demonstrates that it has the administrative experience and capacity to successfully implement this program.

• Health Care Services—the extent to which the applicant has the capacity to provide or arrange for the required services (quality and breadth).

• Collaborative Arrangements—the extent to which the applicant has developed and documented collaborative arrangements with other local providers to conduct outreach, receive referrals and provide services, number of miners to be served and their needs.

• Appropriateness of Budget—the extent to which the applicant's budget is appropriate for the scope of the proposed activities.

Funding Preferences and Priorities: The Bureau of Primary Health Care (BPHC) intends to fund one award. The goal of the BPHC is to award funds to organizations that can best provide comprehensive services to the largest number of eligible individuals in a cost-effective manner.

Funding Preferences

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of applications. The BPHC will give preference to applicants that are State entities which meet the legislative requirements of the Federal Mine and Safety Health Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977. States are given preference per the relevant regulations, specifically 42 CFR 55a.103. The requirements are detailed in regulations.

Funding Priorities

A funding priority is defined as the favorable adjustment of aggregate review scores of individually approved applications when applications meet specific criteria. The following funding priority is applicable to the Black Lung Clinics Program.

• Applicants that are currently operating a Black Lung for patients in compliance with Program Expectations will receive 3 additional points.

Estimated Amount of Available Funds: Up to $250,000 will be available in fiscal year 2003 for this program.

Estimated Project Period: 3 years.

Estimated Number of Awards: It is estimated that one award will be made.

FOR FURTHER INFORMATION CONTACT: Ms. Shirl Taylor-Wilson, Black Lung Clinics Program, Bureau of Primary Health Care, Health Resources Services Administration, 4350 East-West Highway, 9th Floor, Bethesda, Maryland 20818. Phone: 301–594–4420. Fax: 301–594–2470. E-mail: *staylor-wilson@hrsa.gov*.

Public Health System Reporting Requirements: Under these requirements (approved by the Office of Management and Budget 0937–0195), a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include:

(a) A copy of the face page of the application (SF 424)

(b) A summary of the project, not to exceed one page, which provides:

• A description of the population to be served,

• A summary of the services to be provided, and

• A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than Federally-recognized Indian tribal government) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date. (*See* part 148, Intergovernmental Review of Public Health Service Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Dated: April 16, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–11652 Filed 5–8–03; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Clinicians To Become Commissioned Officers; Recruitment of Sites for Assignment of Commissioned Officers

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted to recruit clinicians who will

be hired as commissioned officers in the U.S. Public Health Service. This notice also solicits applications from sites that are seeking the assistance of these commissioned officers. These commissioned officers will be family practice physicians and dentists. They will be assigned by the National Health Service Corps (NHSC) to the neediest Health Professional Shortage Areas throughout the Nation. The NHSC will pay the salaries, moving expenses and benefits for these commissioned officers.

These officers will be part of a mobile cadre of health care professionals, who, in addition to the services they will provide to patients at their assigned sites, may be called upon to respond to regional and/or national emergencies. The NHSC will assist the officers in acquiring, maintaining and enhancing emergency response skills. Their initial assignments will be no longer than three years in duration, after which, should these clinicians choose to stay in the U.S. Public Health Service, they will progress to new assignments.

Eligible Applicants

Clinicians—Applicants must file a U.S. Public Health Service Commissioned Corps application, meet the requirements for such commissioning, have completed a Family Practice residency or dental school (prior to the start of the assignment), have successfully passed the Family Practice board certification or a regional dental licensing exam (prior to the start of the assignment) and have a current, unrestricted license to practice medicine or dentistry in at least one U.S. State or Territory.

Sites—Applicants must be located in a Health Professional Shortage Area (HPSA) and submit a Proposal for Use of a Commissioned Officer 2003 (and, if not yet approved as an NHSC site, a Recruitment and Retention Assistance Application). All sites to which NHSC clinicians are assigned must accept assignment under Medicare, have appropriate agreements with the applicable State entity to participate in Medicaid and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan. Sites must also understand and accept that these officers will periodically be away from their assigned locations as they train for, or respond to, a regional and/or national health emergency.

Application Requests, Dates and Addresses

Application materials are available for downloading via the Web at: *http://nhsc.bhpr.hrsa.gov.*

Clinicians—Completed applications must be postmarked or delivered to the HRSA Commissioned Corps Operations Office by no later than September 30, 2003. Clinicians are encouraged to submit an application early, as applications will be considered as soon as they are received. Completed applications should be mailed or delivered to: HRSA Commissioned Corps Operations Office, Parklawn Building, Room 13A–22, 5600 Fishers Lane, Rockville, MD 20857. Applications received or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Sites—Completed applications must be postmarked or delivered to the NHSC by no later than September 30, 2003. Site applications will be evaluated as soon as they are received at NHSC headquarters. Sites will be deemed qualified based on the quality of the application submitted and the score of the HPSA in which they are located, with preference being given to sites in HPSAs with higher scores. Officers will then be assigned to qualified sites on an ongoing basis. Sites are encouraged to apply early so as to have a better chance of acquiring one of the commissioned officers. The number of qualified sites is expected to exceed the limited supply of commissioned officers. Completed site applications should be mailed or delivered to: National Health Service Corps, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857. Applications received or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Additional Information

Eligible clinicians and sites interested in receiving application material may do so by calling the National Health Service Corps call center at 1–800–221–9393.

Dated: May 2, 2003.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. 03–11499 Filed 5–8–03; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Community Action Grant for Service Systems Change.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: www.fedgrants.gov.

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, Community Action Grant SM 03–007, Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Community Action Grant for Service Systems Change—Short Title: Community Action Grant.

Funding Opportunity Number: SM 03–007.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Public Health Service Act, as amended, Title V, Part B, Section 520A, 42 U.S.C. [290bb–32] Priority Mental Health Needs of Regional and National Significance.

Funding Instrument: G.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration, Center for Mental Health Services (CMHS) announces the availability of $1,000,000 in funding for Phase II Community Action Grants. Successful Phase I grantees may apply for one-year Phase II grants of up to $150,000 (direct and indirect).

The purpose of the Community Action Grant Program (CAG) is to promote the adoption of exemplary mental health practices in communities around the country. Community Action Grants support consensus building, infrastructure development, and training activities for the organization and delivery of services to children with

serious emotional disturbance, adults with serious mental illness, and those with co-occurring substance disorders.

Phase I of the CAG program has supported the development of consensus among key stakeholders with the applicant communities or states to adopt an exemplary practice. When consensus is achieved, grantees begin implementation of the practice. Consensus must be demonstrated through a process evaluation report, memoranda of understanding, funding plans and other documentation that demonstrate stakeholders' firm commitment to adopt the practice. Because of limited funding availability in Fiscal 2003, no applications for Phase I grants will be accepted under this announcement.

Phase II supports implementation through infrastructure development, training, program adaptation and evaluation. Grant funds may be used to provide direct services (therapy, case management, or other interventions to service recipients) only in pilot efforts with a small group of participants in preparation for larger scale implementation.

The two phases of the Community Action Grant operate in sequence to ensure that tested, effective, and documented exemplary practices attain the endorsement and support of the community before they are implemented.

Eligible Applicants: Units of State or local governments, tribal governments and organizations, and domestic private nonprofit organizations such as community-based organizations, faith-based organizations, provider and consumer groups, universities, and health care organizations can apply for CAG.

Because only Phase II grants will be awarded under this announcement, only former or current Community Action Grant Phase I grantees are eligible to apply for Phase II awards. Please *see* the Project Narrative/Review Criteria Section A, Preconditions for further information.

Due Date for Applications: July 8, 2003.

Estimated Funding Available/Number of Awards: Successful Phase I grantees may apply for one-year Phase II grants of up to $150,000 (direct and indirect). It is expected that six to seven awards will be made in FY 2003 under this announcement. Applications with budgets that exceed $150,000 will be returned without review.

Is Cost Sharing Required: No.

Period of Support: 1 year.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: the SAMHSA Mental Health Information Center at (800) 789–2647, Monday through Friday, 8:30 A.M. to 5 P.M., EDT; TDD: (301) 443–9006; Fax: (301) 984–8796; P.O. Box 42490, Washington, DC 20015. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities'').

Contact for Additional Information: David Morrissette, DSW, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3653, e-mail: *dmorriss@samhsa.gov*.

Dated: May 5, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–11653 Filed 5–8–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF JUSTICE

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; petition for alien relative, Form I–130.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. The BCIS is requesting emergency review from OMB of this information collection to ensure that certain immigration benefits are available to eligible applicants. OMB approval has been requested by May 30, 2003. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, Department of Homeland Security Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until July 8, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–130. Bureau of

Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this form will be used by BCIS to determine eligibility for benefits sought for relatives of U.S. citizens and lawful permanent residents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 183.034 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 91,517 annual burden hours.

If additional information is required contact: Ms. Kathy Schultz, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 5, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–11530 Filed 5–8–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–07]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2002

AGENCY: Office of Native American Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2002 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this years award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area or Jackie Kruszek, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone 800–561–5913. Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2002 awards announced in this notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on March 26, 2002 (67 FR 13909). Applications were scored and selected for funding based on the selection criteria in that NOFA and Area Office of Native American Programs (ONAPs) geographic jurisdictional competitions.

The amount appropriated in FY 2002 to fund the ICDBG was $70,000,000. Two million of this amount was retained to fund imminent threat grants in FY 2002. In addition, a total of $4,056,177 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover, are as follows:

Eastern/Woodlands	$6,151,645
Southern Plains	12,608,675
Northern Plains	11,293,350
Southwest	29,923,175
Northwest	5,391,769
Alaska	6,628,571
Total	$72,056,177

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 95 awards made under the various regional competitions in Appendix A to this document.

Dated: May 2, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

Appendix A

Indian Community Development Block Grant Awards for Fiscal Year 2002

Chairman Dave Lopeman, Squaxin Island Tribe, SE Squaxin Lane, Shelton, WA 98584, Phone: (360) 426–9781; Grant Award: $500,000; Activity: Profession Center/Public Services.

Chairman Denny Hurtado, Skokomish Indian Tribes, North 80 Tribal Center Road, Shelton, WA 98584, Phone: (360) 426–4232; Grant Award: $500,000; Activity: Health Services Expansion/Diabetes Prevention Program.

Chairman Ernest L. Stensgar, Coeur d'Alene Tribe, P. O. Box 408, Plummer, ID 83851, Phone: (208) 686–1800; Grant Award: $449,500; Activity: Development of Trailhead Facilities.

Chairperson Cheryl Kennedy, Grand Ronde Indian Tribe, 9615 Grand Ronde Road, Grand Ronde, OR 97347, Phone: (503) 879–5211; Grant Award: $500,000; Activity: Sewer Interceptor Project.

Chairman Matthew Dick, Colville Indian Tribe, P. O. Box 150, Nespelem, WA 99155, Phone: (509) 634–4711; Grant Award: $500,000; Activity: Health Clinic.

Chairman Dennis Sullivan, Lower Elwha Klallam Tribe, 2851 Lower Elwha Road, Port Angeles, WA 98363, Phone: (360) 452–8471; Grant Award: $500,000; Activity: Health Clinic Expansion.

Chairman Kenneth Hansen, Samish Indian Nation, P. O. Box 217, Anacortes, WA 98221, Phone: (360) 299–0790; Grant Award: $500,000; Activity: Cultural and Environmental Facility.

Chairman Edward Metcalf, Coquille Indian Tribe, P. O. Box 783, North Bend, OR 97459, Phone number: (541) 756–0904; Grant Award: $330,366; Activity: Diabetes Clinic.

Chairman Ron Charles, Port Gamble S'Klallam Tribe, 31912 Little Boston Road NE, Kingston, WA 98346, Phone: (360) 297–2646; Grant Award: $500,000; Activity: Career and Education Center.

Chairman Ron Brainard, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, 338 Wallace Avenue, Coos Bay, OR 97420, Phone: (541) 888–9577; Grant Award: $500,000; Activity: Multi-Purpose Center.

Chairman Terry Enos, Ak-Chin Indian Reservation, 42507 West Peters & Nall Road, Maricopa, AZ 85239, Phone: 520–568–2618, Fax: 520–568–4566; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairman Anthony Jack, Big Valley Rancheria of Pomo & Pit River Indians, 2726 Rancheria Road, Lakeport, CA 95453, Phone: 707–263–3924, Fax: 707–263–3977; Grant Award: $550,000; Activity: Housing—New Construction.

Chairman Edward Smith, Chemehuevi Indian Tribe, P.O. Box 1976, Havasu Lake, CA 92363, Phone: 760–858–4219, Fax: 760–858–5400; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairman Wayne Mitchum, Colusa Indian Community—Cachil, DeHe Band, 3730 Highway 45, Colusa, CA 95932, Phone: 530–458–8231, Fax: 530–458–3866; Grant Award: $305,287; Activity: Public Facilities Community Center.

Chairman Henry Blackeye, Jr., Duckwater Shoshone Tribe, P. O. Box 140068, Duckwater, NV 89314, Phone: 775–863–0227, Fax: 775–863–0301; Grant Award: $550,000; Activity: Housing—New Construction.

Chairperson Frances Benally, Fort Bidwell Paiute Indian Community, P. O. Box 129, Fort Bidwell, CA 96112, Phone: 530–279–6310, Fax: 530–279–2233; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Governor Donald Antone, Gila River Pima-Maricopa Indian Community, P. O. Box 97,

Sacaton, AZ 85247, Phone: 520–562–6000, Fax: 520–562–6010; Grant Award: $2,484,112; Activity: Public Facilities—Health Clinic.

Governor Gregg Sarris, Graton Rancheria Indians, P. O. Box 185, Novato, CA 94948, Phone: 707–566–2288; Grant Award: $185,000; Activity: Housing Rehabilitation.

Chairperson Lyle Marshall, Hoopa Valley Tribe, P. O. Box 1348, Hoopa, CA 95546, Phone: 530–625–4211, Fax: 530–625–4594; Grant Award: $750,000; Activity: Public Facilities/Building.

Chairperson Louise Benson, Hualapai Indian Tribe, P. O. Box 179, Peach Springs, AZ 86434, Phone: 928–769–2216, Fax: 928–769–2343; Grant Award: $750,000; Activity: Public Facilities/Building.

Chairperson Rachel Joseph, Lone Pine—Paiute Shoshone Indians, P. O. Box 747, Lone Pine, CA 93545, Phone: 760–876–1034, Fax 760–876–8302; Grant Award: $550,000; Activity: Public Facilities—Community Center.

Chairman Leroy Elliott, Manzanita Band of Diegueno Indians, P. O. Box 1302, Boulevard, CA 91905, Phone: 619–766–4930, Fax: 619–766–4957; Grant Award: $550,000; Activity: Housing New Construction.

Chairperson Shirley Prusia, Mooretown Racheria of Maidu, 1 Alverda Drive, Oroville, CA 95966, Phone: 530–533–3625, Fax: 530–533–3680; Grant Award: $450,000; Activity: Public Facilities/Building.

President Kelsey Begaye, Navajo Nation, P.O. Box 9000, Window Rock, AZ 86515, Phone: 928–871–6352, Fax: 928–871–4025; Grant Award: $5,000,000; Activity: Public Facilities Infrastructure.

Chairperson Leona Williams, Pinoleville Rancheria of Pomo Indians, 367 N. State Street, Suite 204, Ukiah, CA 95482, Phone: 707–463–1454, Fax: 707–463–6601; Grant Award: $550,000; Activity: Land Acquisition for Housing.

Governor Jacob Viarrial, Pueblo of Pojoaque, 39 Camino del Rincon Suite 6, Santa Fe, NM 87501, Phone: 505–867–3381, Fax: 505–455–3363; Grant Award: $550,000; Activity: Housing Rehabilitation.

Chairman Arlan Melendezj, Reno-Sparks Indian Colony, 98 Colony Road, Reno, NV 89502, Phone: 775–329–2936, Fax: 775–329–8710; Grant Award: $550,000; Activity: Public Facilities Building.

Chairman John Currier, Rincon Band of Luiseno Mission Indians, P.O. Box 68, Valley Center, CA 92082, Phone: 760–749–1051, Fax: 760–749–8901; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairperson Claire Wilson, Robinson Rancheria of Pomo Indians, 1545 East Highway 20, Nice, CA 95464, Phone: 707–275–0527, Fax: 707–275–0235; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairman James Moon, Jr., Rohnerville Rancheria Band of Bear River Indians, 32 Bear River Drive, Loleta, CA 95551; Phone: 707–733–1900, Fax: 707–733–1972; Grant Award: $550,000; Activity: Land Acquisition for Housing.

President John Azbill, Round Valley Indian Tribe of the Round Valley Reservation, P.O. Box 448, Covelo, CA 95428, Phone: 707–983–6126, Fax: 707–983–6128; Grant Award: $550,000; Activity: Public Facilities Community Center.

President Ivan Makil, Salt River Pima-Maricopa Indians, 10005 East Osborn Road, Scottsdale, AZ 85256, Phone: 480–850–8000, Fax: 480–850–8014; Grant Award: $2,000,000; Activity: Public Facilities—Community Center.

Chairman Raymond Stanley, San Carlos Apache Tribe, Box 0, San Carlos, AZ 85550, Phone: 928–475–2361 Fax: 928–475–2567; Grant Award: $542,022; Activity: Public Facilities—Senior P.O. Center

Spokesperson Allen Lawson, San Pasqual Band of Diegueno Mission Indians, P.O. Box 365, Valley Center, CA 92082, Phone: 760–749–3200, Fax: 760–749–3876; Grant Award: $550,000; Activity: Public Facilities—Building.

Chairman Gabriel Ray, Scotts Valley Band of Pomo Indians, 9700 Soda Bay Road, Kelseyville, CA 95451, Phone: 707–459–9690, Fax: 707–459–6936; Grant Award: $550,000; Activity: Housing—New Construction.

Chairman Joseph E. Bulfer, Southern Indian Health Council, P.O. Box 2250, Alpine, CA 91903, Phone: 619–445–6315, Fax: 619–445–9126; Grant Award: $550,000; Activity: Public Facilities/Building.

Chairperson Mary Belardo, Torres-Martinez Band of Cahuilla Indians, P.O. Box 1160, Thermal, CA 92274, Phone: 760–397–0300, Fax: 760–397–8146; Grant Award: $525,555; Activity: Housing—New Construction.

Chairperson Carmella Johnson, Upper Lake band of Pomo Indians, P.O. Box 516, Upper Lake, CA 95485, Upper Lake, CA 95485, Phone: 707–275–0737, Fax: 707–275–0757; Grant Award: $413,040; Activity: Public Facilities Infrastructure.

Chairman Robert Quintero, Walker River Paiute Tribe, P.O. Box 220, Schurz, NV 89427, Phone: (775) 773–2306, Fax: (775) 773–2585; Grant Amount: $550,000; Activity: Public Facilities Infrastructure.

Chairperson Susan Masten, Yurok Tribe, P.O. Box 1027, Klamath, CA 95548, Phone: (707) 444–0433, Fax: (707) 444–0437; Grant Amount: $550,000; Activity: Economic Development.

John Lufkins, President, Bay Mills Indian Community, 12140 West Lake Shore Drive, Brimely, Michigan 49715, Phone: (906) 248–5224; Grant Amount: $360,000; Activity: Community Facility.

Chief Paul Thompson, Saint Regis Mohawk Tribe, 412 Route 37, Akwesasne, New York 13655, Phone: (518) 358–2272; Grant Amount: $550,000; Activity: Water Distribution System.

President Troy Swallow, Ho-Chunk Nation, P.O. Box 667, Highway 54 East, Black River Falls, WI 54615, Telephone: (715) 284–9343; Grant Amount: $500,000; Activity: Water System.

Chairperson Sandra Rachal, Sokaogon Chippewa Community, 3086 State Highway 55, Crandon, WI 54520, Telephone: (715) 478–7628; Grant Amount: $500,000; Activity: Convenience Store.

Chairman Robert Chicks, Stockbridge-Munsee Community, N 8476 Mo He Con Nuck Road, Bowler, WI 54861, Telephone: (715) 793–4111; Grant Amount: $500,000; Activity: Assisted Living Center.

Governor Richard Doyle, Pleasant Point Passamaquoddy Tribal Government, P.O. Box 301, Princeton, ME 04668, Telephone: (207) 796–8004; Grant Amount: $500,000; Activity: Housing Rehabilitation.

Chairman Gary Donald, Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772, Telephone: (218) 757–3261; Grant Amount: $500,000; Activity: Fitness/Rehabilitation Center.

Ogema Jonnie J. Sam II, Little River Band of Ottawa Indians, 375 River Street, Manistee, MI 49660, Telephone: (231) 723–8288; Grant Amount: $500,000; Activity: Water Storage and Distribution System.

Chairman Gerald Brun, Red Lake Band of Chippewa Indians, P.O. Box 547, Red Lake, MN 56671, Telephone: (218) 679–3341; Grant Amount: $500,000; Activity: McBride Loop Water Project.

Principal Chief Leon Jones, Eastern Band of Cherokee Indians, P. O. Box 455, Cherokee, NC 28719, Telephone: (828) 497–2771; Grant Amount: $500,000; Activity: Women's Wellness Center.

Chairperson Beverly Wright, Wampanoag Tribe of Gay Head, 20 Black Brook Road, Aquinnah, MA 02535, Telephone: (508) 645–3790; Grant Amount: $500,000; Activity: Community Center.

Chairman Doyle Turner, White Earth Reservation Tribal Council, P.O. Box 418, White Earth, MN 56591, Telephone: (218) 983–3285; Grant Amount: $500,000; Activity: Public Facilities/Improvements.

Governor Bill Anoatubby, Chickasaw Nation, P. O. Box 1548, Ada, OK 74821, Telephone: (580) 436–2603; Grant Amount: $750,000.00; Activity: Wellness Center.

Chairman Alton LeBlanc, Jr., Chitimacha Tribe of Louisiana, P. O. Box 661, Charenton, LA 70523, Telephone: (580) 924–8280; Grant Amount: $750,000; Activity: Infrastructure.

Chief Gregory E. Pyle, Choctaw Nation of Oklahoma, P. O. Drawer 1210, Durant, OK 74702, Telephone: (580) 924–8280; Grant Amount: $750,000; Activity: Diabetes/Wellness Center.

Chairman John Barrett, Citizen Potawatomi Nation, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801, Telephone: (405) 275–3121; Grant Amount: $750,000; Activity: Microenterprise.

Chairman Johnny Wauqua, Comanche Tribe, P. O. Box 908, Lawton, OK 73502, Telephone: (580) 492–4988; Grant Amount: $435,394; Activity: Community Center.

Chief Larry Joe Brooks, Delaware Tribe of Indians, Childcare Center 220 NW Virginia Ave., Bartlesville, OK 74003, Telephone: (918) 336–5272; Grant Amount: $750,000; Activity: Childcare Center.

Chairman Jeff Houser, Fort Sill Apache Tribe, Route 2, Box 121, Apache, OK 73006, Telephone: (580) 588–2298; Grant Amount: $750,000; Activity: Econimic Development.

Mr. Lowell Wesley, Town King, Kialegee Tribal Town, P. O. Box 332, Wetumka, OK 74883, Telephone: (405) 452–3262; Grant Amount: $324,817; Activity: Infrastructure.

Chairman Danny Kaskaske, Kickapoo Tribe of OK, P. O. Box 70, McLoud, OK 74851, Telephone: (405) 964–2075; Grant Amount: $750,000; Activity: Childcare Center.

Principal Chief Perry Beaver, Muskogee (Creek) Nation, P. O. Box 580, Okmulgee, OK

74447, Telephone: (918) 756–8700; Grant Amount: $750,000; Activity: Food Distribution Center.

Principal Chief Jim Gray, Osage Tribe, 627 Grandview, Pawhuska, OK 74056, Telephone: (918) 287–1128; Grant Amount: $528,500; Activity: Headstart/Childcare Center.

Acting Chairman Mike Gawhega, Otoe-Missouria Tribe, 8151 Highway 177, Red Rock, OK 74651–0348, Telephone: (580) 723–4466; Grant Amount: $750,000; Activity: Wellness Center.

President Robert Chapman, Pawnee Business Council, P. O. Box 470, Pawnee, OK 74058, Telephone: (918) 762–3621; Grant Amount: $750,000; Activity: Health Facility.

Chairman Badger Wahwassuck, Prairie Band of Potawatomi, 16281 Q Road, Mayetta, KS 66509, Telephone: (785) 966–2255; Grant Amount: $710,657; Activity: Infrastructure.

Principal Chief Don Abney, Sac & Fox Nation of OK, Route 2, Box 246, Stroud, OK 74079, Telephone: (918) 968–3526; Grant Amount: $750,000; Activity: Youth Center.

Chief LeRoy Howard, Seneca-Cayuga Tribe of Oklahoma, P. O. Box 1283, Miami, OK 74355, Telephone: (918) 542–3684; Grant Amount: $750,000; Activity: Fire Station.

Chairman Earl J. Barbry, Sr., Tunica-Biloxi Tribe of LA, P.O. Box 1585, Marksville, LA 71351; Grant Amount: $750,000; Activity: Multipurpose Center.

President Gary McAdams, Wichita & Affiliated Tribes, P.O. Box 729, Anadarko, OK 73005, Telephone: (405) 247–2425; Grant Amount: $749,957; Activity: Family Community Center.

Chief DuWayne Johnson, Curyung Tribal Council, 134 First Avenue West, P.O. Box 216, Dillingham, AK 99576, Telephone: (907) 842–2384; Grant Amount: $500,000; Activity: Head Start/Family Resource Center.

President Robert Heyano, Native Village of Ekuk, P.O. Box 530 Center, Dillingham, AK 99576, Telephone: (907) 842–3842; Grant Amount: $500,000; Activity: Head Start/ Family Resource Center.

President Wassalie Bavilla, Native Village of Kwinhagak, Box 149, Quinhagak, AK 99655, Telephone: (907) 556–8167; Grant Amount: $500,000; Activity: Youth Center/ Multipurpose P.O. Center.

First Chief Bobby Tritt, Venetie Village Council, P.O. Box 81119, Venetie, AK 99781, Telephone: (907) 849–8212; Grant Amount: $495,000; Activity: New Housing Construction.

President Gary Kompkoff, Native Village of Tatitlek, P.O. Box 171, Tatitlek, AK 99677, Telephone: (907) 325–2311; Grant Amount: $470,320; Activity: Assisted Living Facility.

First Chief Henry Deacon, Grayling IRA Tribal Council, P.O. Box 49, Grayling, AK 99590, Telephone: (907) 453–5116; Grant Amount: $500,000; Activity: Primary Care Facility.

President Pete Mellick, Sleetmute Traditional Council, P.O. Box 34, Sleetmute, AK 99668, Telephone: (907) 449–4205; Grant Amount: $500,000; Activity: Public Services Facility.

First Chief Evon Peter, Arctic Village Council, P.O. Box 69, Arctic Village, AK 99722, Telephone: (907) 587–5523; Grant Amount: $439,500; Activity: New Housing Construction.

President Andrew Boots, Marshall Traditional Council, P.O. Box 110, Marshall, AK 99585, Telephone: (907) 679–6302; Grant Amount: $500,000; Activity: Water/Sewer Expansion.

President Joseph Mike, Native Village of Kotlik, P.O. Box 20210, Kotlik, AK 99620, Telephone: (907) 899–4326; Grant Amount: $500,000; Activity: Water/Sewer/Power/ Boardwalk Expansion.

President Moses Carl, Newtok Village, P.O. Box 5545, Newtok, AK 99559, Telephone: (907) 237–2314; Grant Amount: $498,824; Activity: Primary Care Facility.

President Andrew Kasayuli, Scammon Bay Traditional Council, P.O. Box 126, Scammon Bay, AK 99662, Telephone: (907) 588–5425; Grant Amount: $351,594; Activity: Primary Care Facility.

President Thomas F. Soolook, Native Village of Diomede, P.O. Box 7079, Diomede, AK 99762, Telephone: (907) 686–2175; Grant Amount: $500,000; Activity: Housing Rehabilitation.

Chairman Earl Old Person, Blackfeet Tribe, P.O. Box 850, Browning, MT 59417, Telephone: (406) 338–7521; Grant Amount: $800,000; Activity: Community Water Project.

Chairman Alvin Windy Boy, Chippewa Cree Tribe, P.O. Box 544, Box Elder, MT 59521, Telephone: (406) 395–4282; Grant Amount: $800,000; Activity: Head Start Facility.

Chairman Michael B. Jandreau, Lower Brule Sioux Tribe, P.O. Box 183, Lower Brule, SD 57548, Telephone: (605) 473–5522; Grant Amount: $800,000; Activity: Housing Rehabilitation.

Chairman Gregg Bourland, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, SD 57625, Telephone: (605) 964–4155; Grant Amount: $800,000; Activity: General Purpose Community Center.

Chairman Tex Hall, Three Affiliated Tribes of Fort Berthold, 404 Frontage Road, New Town, ND 58763, Telephone: (701) 627–4781; Grant Amount: $800,000; Activity: Multi-Purpose Cultural Community Center.

Co-Chairman Ben S. Ridgley, Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514, Telephone: (307) 332–6120; Grant Amount: $600,000; Activity: Community Facility to House Public Services.

Chairperson Geri Small, Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, MT 59043, Telephone: (406) 477–6284; Grant Amount: $749,549; Activity: Solid Waste Canister Transfer Station.

Chairman Leonard Burch, Southern Ute Tribe, P.O. Box 800, Ignacio, CO 81137, Telephone: (970) 563–4517; Grant Amount: $800,000; Activity: Alcohol and Drug Treatment Facility.

Chairwoman Lora Tom, Paiute Indian Tribe of Utah, 440 North Paiute Drive, Cedar City, UT 84720, Telephone: (435) 586–1112; Grant Amount: $450,000; Activity: Water Distribution System, Grant Amount: $333,936; Activity: Health Clinic.

Robert Gautier, Executive Director, Salish and Kootenai Housing Authority, P.O. Box 38, Pablo, MT 59855, Telephone: (406) 675–4491; Grant Amount: $800,000; Activity: Water and Sewer Services.

Chairman Charles Murphy, Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, ND 58538, Telephone: (701) 854–7201; Grant Amount: $800,000; Activity: General Purpose Community Center Addition.

Chairman John Blackhawk, Winnebago Tribe, P.O. Box 687, Winnebago, NE, Telephone: (402) 878–2272; Grant Amount: $800,000; Activity: Infrastructure.

[FR Doc. 03–11523 Filed 5–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 1, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–11240 Filed 5–8–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Key Deer Refuge; Key West, Great White Heron, and Crocodile Lake National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Prepare Comprehensive Conservation Plans and Environmental Assessments for National Key Deer Refuge; Key West, Great White Heron, and Crocodile Lake National Wildlife Refuges in Florida.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and environmental assessments pursuant tot he National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on on the scope of issues to include in the environmental documents.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and government and non-government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to the following: Van Fischer, Natural Resource Planner, National Key Deer Refuge, 28950 Watson Boulevard, Big Pine Key, Florida 33043–0510, Telephone 305/872–2239; Fax 305/872–3675; E-mail *Van_Fisher@fws.gov.* Additional information concerning these refuges may be found at the Service's Internet site *http:///www.fws.gov.*

SUPPLEMENTARY INFORMATION: Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purpose. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential.

Crocodile Lake National Wildlife Refuge was established in 1980, to provide wildlife and habitat protection for federally listed threatened and endangered species and migratory birds. A draft comprehensive conservation plan is expected to be completed for this refuge by June 2004.

Key West and Great White Heron National Wildlife Refuges were established in 1908 and 1938 respectively, to protect herons and egrets from plume hunters. National Key Deer Refuge was established in 1957, to protect the endangered Key Deer and other wildlife. Each of the refuges is located in Monroe County, Florida.

As the draft plans for these refuges are completed, reviews will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (41 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 31, 2003.

Christine E. Eustis,

Acting Regional Director.

[FR Doc. 03–11534 Filed 5–8–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability and Public Comment Period for Documents Associated With the Incidental Take Permit (ITP) Previously Issued to Waterman's Realty Co./Winchester Creek Limited Partnership for the Home Port on Winchester Creek Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Waterman's Realty Company/Winchester Creek Limited Partnership was issued an ITP, permit number TE006310, on May 13, 1999, for take of the Delmarva for squirrel. In response to a ruling by the Court of Appeals, the U.S. Fish and Wildlife Service (Service) announces the availability of two documents associated with this ITP and the opening of a 60-day comment period.

DATES: Written comments on these documents should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review these documents may obtain a copy at *http://www.fws.gov/r5cbfo,* or by written or telephone request to John Wolflin, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401 (410–573–4573). Additionally, documents will be available for public inspection by appointment during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Annapolis, Maryland. Data or comments concerning the offsite mitigation map or revised analysis should be submitted in writing to the Project Leader, U.S. Fish and Wildlife Service Office, Annapolis, Maryland at the above address. Please refer to permit number TE006310 when submitting comments.

FOR FURTHER INFORMATION CONTACT: John Wolflin at the above Service Office, Annapolis, Maryland.

SUPPLEMENTARY INFORMATION: On May 13, 1999, after an expanded public comment period of 37 days on the proposed Home Port On Winchester Creek Habitat Conservation Plan (Home Port HCP), the Service issued an ITP for ''take'' of the Delmarva fox squirrel (DFS). The ITP was issued pursuant to the Endangered Species Act (ESA) § 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B), and its implementing regulations at 50 CFR 17.22(b)(1). On September 7, 1999, a neighbor to the proposed development (Gerber) and Defenders of Wildlife (DOW) filed suit alleging numerous violations of the National Environmental Policy Act (NEPA), ESA and the Administrative Procedure Act (APA) related to issuance of the ITP for the Home Port HCP.

The District Court granted summary judgment on all counts in favor of the Service on May 15, 2001. *See Gerber* v. *Babbitt,* 146 F.Supp.2d 1 (D. D.C. 2001). DOW appealed the District Court's ruling on two issues. The availability of a map during the original public comment period, and the Service's finding regarding the impracticability of a project design alternative.

A summary of the first issued follows: The Plaintiffs/Appellants, who had been provided approximately 45 days (due to receipt of an advance copy by agreement) to comment on the HCP, notified the Service shortly before the end of the public comment period of their desire for additional time to comment because no map of the offense mitigation area had been provided. The Service sent them the map, but did not extend the comment period. While the District Court ruled that omission of the map was a harmless error, not in violation of the ESA, the Court of

Appeals disagreed. *See Gerber* v. *Norton*, 294 F.3d 173, 175, 178–84 (D.C. Cir. 2002). The Court of Appeals held that the failure to allow additional formal opportunity to comment once provided with the map violated the ESA and therefore remanded the matter to the District Court with instructions to remand to the agency. *See id.* at 184.

The second issue is whether the Service satisfied its statutory issuance criteria. A summary of this issue follows: Section 10(a)(2) of the ESA, 16 U.S.C. 1539(a)(2), specifies the requirements for issuance of an incidental take permit. This provision is broken into two distinct subsections. One sets forth the required components of an application from which the Service can judge whether an applicant's submission is complete. *See* Section 10(a)(2)(A). 16 U.S.C. 1539(a)(2)(A). The other provides the issuance criteria by which the Service must evaluate and approve an application package once it has determined the submission is complete. *See* section 10(a)(2)(B), 16 U.S.C. 1539 (a)(2)(B).

While the District Court ruled the Service had adequately justified all of its requisite findings, the Court of Appeals agreed with Plaintiffs/Appellants that the service had violated the ESA by failing to independently make the requisite finding that the developer would minimize and mitigate the impacts of the taking to the maximum extent practicable as required under § 10(a)(2)(b)(ii), 16 U.S.C. 1539(a)(2)(b)(ii). The Court of Appeals held that the Service's finding concerning whether the impacts of the taking from the project would be minimized and mitigated to the maximum extent practicable was made improperly. Specifically, the Court held that the Service did not make its own independent finding as to whether a possible project change identified in the record (the ''Reduced Take Alternative'') was practicable.

The Service has now conducted its own independent analysis, which is reflected in the draft document entitled ''Draft—Assessment of Practicability of the Reduced Take Alternative on Remand''. This document evaluates the practicability of additional minimization measures discussed in the Reduced Take Alternative in the Home Port HCP and the practicability of measures considered as alternatives in the Environmental Assessment. The Service has independently evaluated the operative constraints on these measures, which include local governmental processes and permitting, costs and time delays. While the Service was previously aware of many of these constraints, no analysis was presented in detail in any document.

Accordingly, the Service makes available for public review and comment: (1) A map of the offsite mitigation land proposed by the applicant to mitigate for impacts to the Delmarva fox squirrel from the Home Port development in accordance with 16 U.S.C. 1539(a)(2)(B): and (2) a revised analysis of the statutorily mandated finding under 16 U.S.C. 1539 (a)(2(B)(ii), that ''the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking''.

Public Comments Solicited

The Service solicits written comments on the offsite mitigation land proposed by the applicant and a more detailed analysis of the practicability of the reduced take alternative. All comments received by the date specified above will be considered prior to completion of a revised decision document on remand.

Dated: April 18, 2003.

Richard O. Bennett,

Acting Regional Director.

[FR Doc. 03–11531 Filed 5–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 120 5882 CD99; 3–0159]

Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (RAC) Meeting as identified in section 205 (f) (2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

SUMMARY: The BLM Coos Bay District RAC will be meeting on May 30, 2003 from 9 a.m. until 12:30 p.m. at the BLM Coos Bay District Office. The Coos Bay District Office is located at 1300 Airport Lane in North Bend, Oregon. The purpose of this meeting will be to review the progress of previously funded projects, elect a new Chairperson, present the RAC with this year's projects to be reviewed for funding, and provide an opportunity for dialogue between the RAC, the Bureau, and the public.

FOR FURTHER INFORMATION CONTACT: Sue Richardson, District Manager, at 756–0100 or Glenn Harkleroad, District Restoration Coordinator, at 751–4361 or *glenn_harkleroad@or.blm.gov.* The mailing address for the BLM Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

SUPPLEMENTARY INFORMATION: Additional information about the Coos Bay RAC and a meeting agenda can be found at *http://www.or.blm.gov/coosbay.*

Dated: May 2, 2003.

Sue E. Richardson,

Coos Bay District Manager.

[FR Doc. 03–11494 Filed 5–8–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,654; Arizona Chemical Co., Esters Department, Dover, OH
TA–W–50,651; Vishay BLH, Inc., Canton, MA
TA–W–51,175; Jamestown Precision Wooling, Inc., Jamestown Div., Jamestown, NY
TA–W–51,206; Hosokawa Micron International, Inc., Hosokawa Manufacturing Div., Santa Rosa, CA
TA–W–51,265; Galt Alloys, Inc., a subsidiary of RTI International, Canton, OH
TA–W–50,803; Rock-Tenn Co., El Paso, TX
TA–W–50,860; Cannondale Corp., Motorsports Plant, Bedford, PA
TA–W–51,044; Greenlee-Fairmont, a wholly-owned subsidiary of Textron, Inc., Fairmont, MN
TA–W–50,427; Boxboard Packaging, Inc., Norwalk, OH
TA–W–51,569; Arris Group, Inc., Formerly Arris Interactive, LLC and Antec, Keptel Div., Rock Falls Facility, Rock Falls, IL
TA–W–50,075; Mayville Engineering Co., Inc., Mayville, WI
TA–W–50,205; McInnes Rolled Rings, Erie, PA
TA–W–50,447; Fulton Bellows and Components, Knoxville, TN
TA–W–50,580; Allsteel, Inc., Casegoods Div., An Operating Unit of Hon Industries, Inc., West Hazelton, PA
TA–W–50,597 &A; Harriet & Henderson Yarns, Inc., J.D. Plant, Henderson, NC and Henderson Plant, Henderson, NC
TA–W–50,823; Alcoa Composition Foils, Pevely, MO
TA–W–51,005; Louisiana Pacific Corp., Missoula, MT
TA–W–51,045; Precision Cast Parts, Steel Plant, Portland, OR
TA–W–51,011; Ivy Steel & Wire, a Div. of MMI Products, Inc., Baltimore, MD
TA–W–51,320; Heath Electronic Manufacturing Corp., Glenns Ferry, ID
TA–W–51,355; Culp, Inc., Rossville Div., Chattanooga, TN
TA–W–51,443; Automotive Ignition Co., Inc., Pittsburgh, PA
TA–W–51,466; Fishing Vessel (F/V) Fawcett Point, State of Alaska Commercial Fisheries Entry Commission Permit # S04K595562L, Old Harbor, AK
TA–W–51,562; The Interflex Group, Ashland, VA
TA–W–51,596; State of Alaska Commercial Fisheries Entry Commission Permit #S04T65030C, Nondalton, AK

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–51,101; Agilent Technologies, ASIC Product Div., Fort Collins, CO
TA–W–51,111; General Magnetic Technology, Inc., Lake Worth, FL
TA–W–51,203; Arrow Electronics, Inc., BP Branch, Foothill Ranch, CA
TA–W–51,335; General Electric Industrial Systems, Drives and Controls, Inc., Salem, VA
TA–W–51,054; Sonicblue, Inc., Call Center, Tigard, OR
TA–W–51,189; Nokia, Inc., Broadband Systems Div., Santa Rosa, CA
TA–W–51,085; Fluor Daniel, Rochester, MN
TA–W–51,103; Toshiba America Electronic Components, Inc., Design Center, Beaverton, OR
TA–W–51,127; Omega Worldwide, Inc., Corporate Office, Ann Arbor, MI
TA–W–51,315; Cela Fabrics, Inc., New York, NY
TA–W–51,352; Friedman Bag Co., Inc., Portland, OR
TA–W–51,410; Gates Mills, Inc., Johnstown, NY
TA–W–51,537; Tru-Stitch Footwear, Div. of Wolverine Worldwide, Inc., Malone, NY
TA–W–51,534; HTP Security, Inc., Goldendale, WA
TA–W–51,528; Battery Sales, Inc., Hempstead, NY

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–50,337; Maclean-ESNA, a subsidiary of Maclean Fogg Co., Pocahontas, AR
TA–W–51,601; Schroder Boards, Bingen, WA

The investigation revealed that criterion (a)(2)(A) (I.B.) (Sales or production, or both, did not decline) and (II.B) (has shifted production to a country not under the free trade agreement with the U.S.) have not been met.

TA–W–51,326; Ross Mould, Inc., Washington, PA

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,403; Clariant Corp., Oak Creek, WI

The following certification has been issued. The requirement of (a)(2)(A) (increased imports) of section 222 has been met.

TA–W–51,246; Cold Metal Products, Youngstown, OH

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,133 &A; Phelps Dodge Corp., Phelps Dodge Wire and Cable Group, Phelps Dodge High Performance Conductors (Div), West Caldwell, NY and Phelps Dodge Specialty Copper Products (Div), Elizabeth, NJ: November 14, 2001.
TA–W–51,365; Dirigo Stitching, Inc., Skowhegan, ME: March 26, 2002.
TA–W–51,395; Lexington Home Brands, Plants 1,2,4,5 and 12, Lexington, NC: March 31, 2002.
TA–W–51,460; Mettler Toledo, Inc., Spartanburg Product Organization, Inman, SC: April 8, 2002.
TA–W–51,505; KMC Products, Inc., d/b/a KMC Wheel Co., Riverside, CA: March 31, 2002.
TA–W–51,427; Rhodia, Inc., Freeport, TX: March 28, 2002.
TA–W–50,975; Pasco Tool & Plastics, Inc., Meadville, PA: February 24, 2002.
TA–W–51,137; SASOL North America, Inc., Baltimore, MD: March 13, 2002.
TA–W–51,196; Siemens Energy & Automation, Inc., Power Conversion Div., Norwood, OH: January 13, 2002.
TA–W–51,290; Glassco, IN., d/b/a Traditions Lamp Co., Altoona, AL: March 24, 2002.
TA–W–50,678; Keller Manufacturing Co., Inc., Culpeper, VA: January 22, 2002.
TA–W–50,878; Cannondale Corp., Bicycle Plant, Bedford, PA: February 10, 2002.
TA–W–50,045; Domestic Manufacturing Corp., Kinston, NC: November 12, 2001.
TA–W–50,879; Maine Brand Manufacturing, Inc., Littleton, ME: February 12, 2002.
TA–W–50,668; JDS Uniphase Corp., Lundy facility, Optical Layer Group, San Jose, CA: December 9, 2001.
TA–W–50,382; Reddog Industries, Inc., Erie, PA: December 17, 2001.

TA–W–50,654; Arizona Chemical Co., Sebacic Department and Esters Department, Dover, OH: January 21, 2002.

TA–W–50,742 &A,B; Tweel Home Furnishing, Newark, NJ and Harrison, NJ and Lakewood, NJ: January 24, 2002.

TA–W–50,938; Rexnord Industries, Inc., Milwaukee, WI: February 21, 2002.

TA–W–50,953; Advanced Energy, Voorhees, NJ: February 19, 2002.

TA–W–50,978; The Magnus Group, Inc., d/b/a Progressive Information Technologies, Emigsville, PA: February 20, 2002.

TA–W–51,062; Ethan Allen, Inc., Dudley Plant, Dudley, MA: February 25, 2002.

TA–W–51,289 &A; Sun Hill Industries, including temporary workers of Adecco, Scotia, NY and Stamford, CT: March 18, 2002.

TA–W–51,115; Meadwestvaco Corp., Luke, MD: March 7, 2002.

TA–W–51,215; Hydromatic Pump, Ashland, OH: March 5, 2002.

TA–W–51,192; U.S. Textile Corp., Newland, NC: March 12, 2002.

TA–W–51,233; Universal Stainless and Alloy Products, Bridgeville, PA: March 17, 2002.

TA–W–51,349; Alpharma, Inc., Hannibal Manufacturing Plant, including leased workers of BASF, Palmyra, MO: March 27, 2002.

TA–W–51,441; Rochester Button Co., Inc., Kenbridge, VA and South Boston, VA: April 14, 2002.

TA–W–51,481; Alexandra Fashions, Inc., North Bergen, NJ: March 31, 2002.

TA–W–51,483; Whiting & Davis, Inc., a div. of Bacou-Dallos and leased workers of Adecco, Attleboro Falls, MA: April 10, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,260; Motorola, Inc., Semiconductor Products Sector, Bipolar Manufacturing Center, Mesa, AZ: December 5, 2001.

TA–W–51,323; Michael Anthony Jewelers, Inc., Mt. Vernon, NY: February 28, 2002.

TA–W–51,430 &A,B; Triangle Suspension Systems, Inc., DuBois, PA, Brentwood, TN and Fontana, CA: April 3, 2002.

TA–W–50,615; BP Solor, LLC, Toano, VA: January 18, 2002.

TA–W–50,650; Davol, Inc., Lawrence, KS: January 22, 2002.

TA–W–50,733; Nidec America Corp., Power General Div., Canton, MA: January 29, 2002.

TA–W–51,517; Ace's Sanding Shop, Thomasville, NC: April 14, 2002.

TA–W–50,743; The compare Corp., Sidney, OH: January 16, 2002.

TA–W–50,807; MCB, Inc., d/b/a Wild Rose, Los Angeles, CA: January 21, 2002.

TA–W–51,322; Alburg Door & Window Ltd., Alburg, VT: March 24, 2002.

TA–W–51,398; Textron Fastening Systems, Syntek Operations, a wholly owned subsidiary of Textron, Inc., including leased workers of QSP Staffing, Rockford, IL: March 21, 2002.

TA–W–51,416; Weyerhaeuser Box Plant, Laredo, TX: March 18, 2002.

TA–W–51,444; Lindley Laboratories, Inc., Gibsonville, NC: March 31, 2002.

TA–W–51,487 & A; R.A.G.S., Inc., Lexington, NC and Richfield, NC: April 11, 2002.

TA–W–51,476; Ultra cutting, Inc., Medley, FL: April 2, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,319; Gem Island Enterprises, a/b/a Opal Industries, Morganton, NC: March 18, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None

Affirmative Determinations NAFTA–TAA

None

I hereby certify that the aforementioned determinations were issued during the month of April 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 2, 2003.

Terrence Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–11552 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,315]

Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application received on April 3, 2003, a petitioner requested administrative reconsideration of the

Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, Texas was signed on March 7, 2003, and published in the **Federal Register** on March 26, 2003 (67 FR 14706).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, Texas engaged in activities related to software and hardware support. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges the software and hardware support at Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, Texas is an ''integral part of the product'' made for the customer.

An investigation of this matter, including contact with the company, revealed that a very small portion of the services supplied involve hardware (modifications) and that all of the software support provided is electronically generated to the customer. Electronically generated material does not constitute production within the meaning of Section 222 of the Trade Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11543 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,509]

Alpha Omega Jet Services, Inc., Sulphur Springs, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003 in response to a worker petition filed by a company official on behalf of workers at Alpha Omega Jet Services, Inc., Sulphur Springs, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11551 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,264]

Atlantic Metal Products Springfield, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 6, 2002, in response to a worker petition filed at a company official's request by the New Jersey State Trade Coordinator on behalf of workers at Atlantic Metal Products, Springfield, New Jersey.

The Department of Labor has been unable to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11544 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,555]

BASF Corporation, Anderson, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 21, 2003, in response to a worker petition filed by a company official on behalf of workers at BASF Corporation, Anderson, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 29th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11558 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,622]

Casco Products, Inc., Bridgeport, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 29, 2003 in response to a worker petition filed by the IUE/CWA on behalf of workers at Casco Products, Inc., Bridgeport, Connecticut.

The petitioning group of workers is covered by an active certification issued on July 19, 2002 (TA–W–41,561). Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 30th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11560 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,480]

Chorum Technologies, L.P., Richardson, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 11, 2003 in response to a petition filed by a company official on behalf of workers at Chorum Technologies, L.P., Richardson, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 29th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11555 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,902]

Daniel Blanton, Homosassa, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 14, 2003 in response to a petition filed by a company official on behalf of workers at Daniel Blanton, Homosassa, Florida.

The Department has been unable to locate a company official to obtain the information necessary to render a determination on worker group eligibility.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 25th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11548 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,849]

Diamond Brands—Wilton Box Plant, Dryden, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2003 in response to a worker petition filed on behalf of workers at Diamond Brands, Wilton Box Plant, Dryden, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11547 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,631]

Garden State Tanning, Williamsport, MD; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2003 in response to a worker petition filed on behalf of workers at Garden State Tanning, Williamsport, Maryland.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11546 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,630]

J.C. Viramontes, Inc., D/B/A International Garment Processors, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 29, 2003, in response to a worker petition filed by a company official on behalf of workers at J.C. Viramontes, Inc., d/b/a International Garment Processors, El Paso, Texas.

The petitioning group of workers is covered by an active certification issued on June 29, 2001 and which remains in effect (TA–W–39,196). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11561 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,572]

Lonestar Cutting Services, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 24, 2003, in response to a petition filed on behalf of workers at Lonestar Cutting Services, Inc., El Paso, Texas.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11559 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,992]

Lonza Group, Los Angeles, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003 in response to a worker petition filed on behalf of workers at Lonza Group, Los Angeles, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 23rd day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11549 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,499]

Malthus Diagnostics, Inc., North Ridgeville, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 15, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Malthus Diagnostics, Inc., North Ridgeville, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11557 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,174, TA–W–51,174A, TA–W–51,174B, and TA–W–51,174C]

Mann Edge Tool Company, Assembly and Shipping Division, Lewistown, PA; Mann Edge Tool Company, Forge Division, Lewistown, PA; American Hickory Corporation, a Wholly Owned Subsidiary of Mann Edge Tool Company, Lewistown, PA; White Container Corporation, a Wholly Owned Subsidiary of Mann Edge Tool Company, Lewiston, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2003 in response to a worker petition filed by a company official on behalf of workers at Mann Edge Tool Company, Assembly and Shipping Division, Lewistown, Pennsylvania (TA–W–51,174), Mann Edge Tool Company, Forge Division, Lewistown, Pennsylvania (TA–W–51,174A), American Hickory Corporation, a wholly-owned subsidiary of Mann Edge Tool Company, Lewistown, Pennsylvania (TA–W–51,174B), and White Container Corporation, a wholly-owned subsidiary of Mann Edge Tool Company, Lewistown, Pennsylvania (TA–W–51,174C).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 25th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11553 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,451]

Powerex, Inc., Youngwood, PA; Amended Notice of Revised Determination On Reconsideration

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reconsideration on April 17, 2003, applicable to workers of Powerex, Inc, Youngwood, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce semiconductor products (thyristors and rectifiers).

New findings show that there was a previous certification, TA–W–37,447, issued on June 16, 2000, for workers of Powerex, Inc., Youngwood, Pennsylvania who were engaged in employment related to the production of semiconductor products (thyristors and rectifiers). That certification expired June 16, 2002. To avoid an overlap in worker group coverage, the revised determination is being amended to change the impact date from March 8, 2002, to June 17, 2002, for workers of the subject firm.

The amended notice applicable to TA–W–41,451 is hereby issued as follows:

All workers of Powerex, Youngwood, Pennsylvania, who became totally or partially separated from employment on or after June 17, 2002, through April 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 29th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11542 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,431]

Tecumseh Products Company, Grafton Operations, Grafton, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 4, 2003 in response to a petition filed by the International Association of Machinists and Aerospace Workers, District 10 on behalf of workers at Tecumseh Products Company, Grafton Operations, Grafton, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11554 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,482]

Tecumseh Products Company, Douglas Operations, Douglas, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 11, 2003 in response to a petition filed by a company official on behalf of workers at Tecumseh Products, Douglas Operations, Douglas, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11556 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,339]

Tower Automotive, Inc., Milwaukee, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 23, 2003, applicable to workers of Tower Automotive, Inc., Milwaukee, Wisconsin. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8623).

The Department reviewed the certification for workers of the subject firm. The workers produce structural component parts and assemblies for light truck bodies.

New findings show that there was a previous certification, TA–W–38,407, issued on January 31, 2001, for workers of Tower Automotive, Inc., Milwaukee, Wisconsin who were engaged in employment related to the production of structural component parts and assemblies for light truck bodies. That certification expired January 31, 2003. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from December 9, 2001 to February 1, 2003, for workers of the subject firm.

The amended notice applicable to TA–W–50,339 is hereby issued as follows:

All workers of Tower Automotive, Inc., Milwaukee, Wisconsin, who became totally or partially separated from employment on or after February 1, 2003, through January 23, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11545 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,330]

Zilog, Incorporated, MOD II, Nampa, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2003 in response to a worker petition filed by a company official on behalf of workers at Zilog, Inc., Mod II, Nampa, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11550 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 26a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued

Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 30th day of April, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–11117 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Fire Protection (Underground Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.1100–3, 75.1101–23, 75.1103–8, & 75.1103–11; Fire Protection (Underground Coal Mines).

DATES: Submit comments on or before July 8, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR 75.1100–3, chemical fire extinguishers must be examined every 6 months and the date of the examination recorded on a permanent tag attached to the extinguisher. Under § 75.1101–23(a), operators of underground coal mines are required to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures to be followed in event of an emergency. The program includes a specific fire fighting and evacuation plan designed to acquaint miners on all shifts with procedures for: (i) Evacuation of all miners not required for fire fighting activities; (ii) rapid assembly and transportation of necessary people, fire suppression equipment, and rescue apparatus to the scene of the fire; and (iii) operation of the fire suppression equipment available in the mine. Under 75–1101–23(c), an underground coal mine operator is required to conduct fire drills at intervals of not more than 90 days. The operator is to certify by signature and date that fire drills were conducted in accordance with the approved program. Under § 75.1103–8, a qualified person must examine the automatic fire sensor and warning device systems on a weekly basis, and must conduct a functional test of the complete system at least once a year. Under § 75.1103–11, each fire hydrant and hose must be tested at least once a

year, and the records of those tests shall be kept in an appropriate location.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

30 CFR 75.1100–3, 1101–23, 1103–8 & 11, requires chemical fire extinguishers to be examined every 6 months; requires operators to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures in the event of an emergency; requires operators to conduct fire drills; requires a qualified person to examine the automatic fire sensor and warning device systems; and requires that each fire hydrant and hose be tested.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines).

OMB Number: 1219–0054.

Recordkeeping: § 75.1100–3 requires that after the examination of chemical fire extinguishers, the date of the examination be recorded on a permanent tag attached to the extinguisher. § 75.1101–23(c), requires that after conducting fire drills the operator must certify by signature and date that the fire drills were conducted. § 75.1103–8 requires the mine operator to maintain records of the annual functional test of the automatic fire sensor and warning device systems. And § 75.1103–11 requires that records be kept of each fire hydrant and hose test.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 893.

Estimated Time Per Response: 14 minutes.

Total Burden Hours: 77,122 hours.

Total Burden Cost (in thousands) (capital/startup): $0.

Total Burden Cost (operating/maintaining): $1.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 2nd day of May, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–11540 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ground Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 8, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Each operator of a surface coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan that is consistent with prudent engineering design and which will ensure safe working conditions. The plans are based on the type of strata expected to be encountered, the height and angle of highwalls and spoil banks, and the equipment to be used at the mine. Ground control plans are required by 30 CFR 77.1000–1 to be filed with the MSHA district Manager in the district in which the mine is located. The plans are reviewed by MSHA to ensure that highwalls, pits, and spoil banks are maintained in safe condition through the use of sound engineering design.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the FOR FURTHER INFORMATION CONTACT

section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to submit ground control plans to ensure that highwalls, pits, and spoil banks are maintained in safe condition so that a safe working environment is provided for miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ground Control Plan.

OMB Number: 1219–0026.

Recordkeeping: § 77.1000–1 states that the operator shall file a copy of the ground control plan and revisions with the Coal Mine Health and Safety District or Subdistrict office for the District or Subdistrict in which the mine is located and shall identify the name and location of the mine; the Mine Safety and Health Administration identification number if known; and the name and address of the mine operator.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,401.

Average Time Per Response: 8.5 hours.

Total Burden Hours: 1,718 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 2nd day of May, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–11541 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–1]

Request for Comments on the Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores (draft guidelines). The draft guidelines are available on OSHA's Web site and through its publications office. Interested persons may submit written or electronic comments on the draft guidelines. The agency will also hold a stakeholder meeting where the public is invited to express its views on the draft guidelines.

DATES: *Written Comments:* Comments must be submitted by the following dates:

Hard Copy: You must submit your comments (postmarked or sent) by July 8, 2003.

Facsimile and electronic transmission: You must submit your comments by July 8, 2003.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting: OSHA will hold a one-day stakeholder meeting in the Washington, DC metropolitan area to discuss the draft guidelines. OSHA will announce the exact location and date of the stakeholder meeting prior to the close of the comment period. OSHA requests that interested parties submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax or electronic means by July 8, 2003.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2003–1, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., E.S.T. You must submit one copy of your intent to participate in the stakeholder meeting by express delivery, hand delivery, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2003–1, in your comments. You may also fax your intention to participate in the stakeholder meeting.

Electronic: You may submit comments (but not attachments) and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov/*. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines for the retail grocery industry from OSHA's Web site at *www.osha.gov*. A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web site. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments and intentions to participate

in the stakeholder meeting by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web site at *http://www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web site and for assistance in using the Web site to locate docket submissions.

OSHA is providing the public with 60 days to provide comments on the draft retail grocery store ergonomics guidelines. During the development of the nursing home ergonomics guidelines (the final version was published march 13, 2003), the agency provided 30 days for comment, then extended the comment period for an additional 30 days at the request of several stakeholders. The 60-day period provided adequate time for the public to provide comments, so OSHA believes that allowing 60 days for the public to comment on the draft retail grocery guidelines is adequate.

II. Background

On April 5, 2002, the Department of Labor announced a four-pronged comprehensive approach for addressing musculoskeletal disorders (MSDs), which calls for OSHA to develop industry- or task-specific guidelines. OSHA's second industry-specific guidelines address ergonomic concerns in retail grocery stores and supercenters (combined full-line supermarket and discount merchandisers). While other business operations, such as distribution centers, banks, post offices, or other retail or wholesale operations may also be located in grocery stores, these guidelines are not intended to apply to these other businesses. The guidelines are also not intended to apply to other retail and distribution operations, such as warehouses or convenience stores.

The draft guidelines contain an introduction and two main sections. The introduction provides an overview of MSDs in retail grocery stores. It also explains the role of ergonomics in reducing the incidence of these injuries. A section entitled ''A Process for Protecting Workers'' describes a process for developing and implementing a strategy for analyzing the workplace, implementing ergonomic solutions, training, addressing reports of injuries, and evaluating progress.

The Implementing Solutions section describes examples of ergonomic solutions that may be used by grocery stores to control exposure to ergonomic risk factors in grocery stores. The Implementing Solutions section includes general corrective actions, followed by solutions for certain grocery store departments, including:

- Stocking,
- Bakery,
- Produce, and
- Meat department.

The draft guidelines finish with a list of references and sources of additional information grocery store managers can use to help them with their ergonomic efforts.

OSHA encourages interested parties to comment on all aspects of the draft guidelines. The agency is particularly interested in any information about successful ergonomics efforts, and individual ergonomic interventions, that the grocery store industry has used to address ergonomic concerns.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will hold a stakeholder meeting in the Washington, DC metropolitan area during the week of July 28, 2003. The agency will announce the exact date and location of the stakeholder meeting at a later date.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 6th day of May, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–11562 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 55, section 55.59(c)(1) for Facility Operating License No. DPR–72, issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3 (CR–3), located in Citrus County, Florida. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would constitute a one-time exemption to allow the current licensed operator requalification program to exceed 24 months. The requested exemption would extend the completion date for the current requalification program from December 31, 2004, to February 28, 2005, and would include an extension to February 28, 2005, for completing the required annual operating tests and comprehensive biennial written examination. The next requalification program period would begin on March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months.

The proposed action is in accordance with the licensee's application for exemption dated March 6, 2003.

The Need for the Proposed Action

The proposed action would extend the current CR–3 requalification program from December 31, 2004, to February 28, 2005. The next requalification program period would begin on March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months. The proposed action is needed to allow for minimal interruption of the licensed personnel based on scheduling difficulties associated with an end-of-the-year requalification program cycle. Specifically, the licensee has stated that moving operator annual and biennial exams to a January to February timeframe would support the following benefits for the licensee: (1) Minimize the fall refueling outage impact on exam development; (2) minimize the potential impact from any fall refueling outage extensions; (3) minimize the scheduling and resource impact from holidays; (4) minimize the potential scheduling and resource impact of any exam remediation or retesting requirements during the holidays; and (5) minimize the potential impact from future bargaining unit negotiations that occur periodically in the fourth calendar quarter. The licensee deems it prudent to allow the licensed personnel operating the plant to remain fully available to stand watch on operating

crews and not be distracted by completing the licensed operator requalification program by December 31, 2004.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the extension of the completion date for the operator requalification program from December 31, 2004, to February 28, 2005.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for CR–3.

Agencies and Persons Consulted

On May 1, 2003, the staff consulted with the Florida State official, William Passetti, of the Florida Department of Health Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 6, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of May, 2003.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11526 Filed 5–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6622]

Finding of No Significant Impact and Availability of the Environmental Assessment Regarding the Proposed Changes to the Reclamation Plan for the Pathfinder Mines Corporation's Shirley Basin Site, Shirley Basin Region of Wyoming

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment of NRC Source Material License SUA–442 to authorize the licensee, Pathfinder Mines Corporation (PMC), to change the Reclamation Plan for the Shirley Basin uranium mill tailings site located in the Shirley Basin region of Wyoming. PMC requested that NRC approve the proposed changes to the Reclamation Plan by letter dated October 16, 2001, as amended August 9, 2002.

An Environmental Assessment (EA) was performed by the NRC staff in support of its review of PMC's license amendment request, in accordance with the requirements of 10 CFR Part 51. Based on the evaluation, the staff concluded that a Finding of No Significant Impact (FONSI) is appropriate for this licensing action.

II. EA Summary

The EA was prepared to evaluate the environmental impacts of PMC's request to amend NRC license SUA–442, by revising the Reclamation Plan for the Shirley Basis site to allow PMC to do two things. First, in response to recent tailings analysis which showed a significant decrease in source term from what was estimated in the original Reclamation Plan, it would allow PMC to reduce the radon clay barrier thickness from 2.5 feet to .5 feet. The licensee has calculated that with this reduction on thickness, the average radon flux will still be within the required levels and they will confirm this fact by actual measurement. Second, it would allow PMC to create relatively flat vegetated surfaces or benches, with rock protected apron slopes to make the transition between benches. This would provide a reclamation surface covered primarily by vegetated topsoil instead of large expanses of rock. The technical aspects of the application are to be discussed separately in a Technical Evaluation Report (TER) that will accompany the agency's final licensing action.

The results of the staff's evaluation are documented in an EA placed in the Publicly Available Records (PAR) component of NRC's document system (ADAMS).

III. Finding of No Significant Impact

Based on the EA, as summarized above, the staff has concluded that the proposed licensing action would not have any significant effect on the quality of the human environment, and therefore, an environmental impact statement is unnecessary.

IV. Further Information

The EA for this proposed action as well as the licensee's request are available for inspection at the NRC's Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Number for licensee request is: ML012980334 (October 16, 2001), ML022310348 (August 8, 2002) and ADAMS Accession Number for the EA is: ML031190198). Documents can also

be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001. Telephone (301) 415–6334.

Dated at Rockville, Maryland, this 30th day of April, 2003.

For the U.S. Nuclear Regulatory Commission.

Susan M. Frant,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–11527 Filed 5–8–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on May 29, 2003, at 10 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 22nd Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 22nd Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: May 5, 2003.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–11536 Filed 5–8–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 12, 2003:

A Closed Meeting will be held on Tuesday, May 13, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, May 13, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal order of investigation; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 7, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11823 Filed 5–7–03; 4:03 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47793; File No. SR–NYSE–2003–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. To Disengage NYSE Direct+ in Five Actively-Traded Stocks on a One-Week Pilot Basis

May 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2003, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 28, 2003, the Exchange 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 and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to disengage NYSE Direct+®[4] in five

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 24, 2003 (''Amendment No. 1''). Among other things, Amendment No. 1: (1) Clarifies that the NYSE is disengaging NYSE Direct+ in five stocks to assess the impact of its automated dissemination of quotes feature on Exchange floor transactions without Direct+ changing the depth of the market; (2) clarifies that during this pilot, the Exchange intends to monitor variables such as liquidity, continuity, spread, depth, and number of trades; and (3) provides proposed rule text regarding the pilot and the five stocks that will not be participating in NYSE Direct+. On April 30, 2003, the NYSE submitted a new exhibit A to Amendment No. 1. The new exhibit, which supercedes only Exhibit A to Amendment No. 1, makes corrections to the proposed rule text by inserting previously approved rule language under NYSE Rule 1000 that the NYSE inadvertently excluded from the original filing. *See* letter from Donald Siemer, Director, Rule Development, NYSE, to Lisa N. Jones, Attorney, Division, Commission, dated April 30, 2003.

[4] NYSE Rules 1000–1005 provide for the automatic execution of limit orders of 1,099 shares or less against the Exchange's disseminated bid or offer. NYSE Direct+ was originally filed as a one-year pilot. *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4,

Continued

actively-traded stocks on a one-week pilot basis to assess the impact of autoquoting of bids and offers in connection with the Exchange's initiative to disseminate ''liquidity quotes.'' Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Rule 1000

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i)–(vi) No change.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto-ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.

During a one-week pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the week the pilot will run.

* * * * *

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. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has begun to test on the Exchange's floor its initiative to disseminate ''liquidity quotes'' [5] in addition to the NYSE's highest bid and lowest offer. As part of this initiative, the Exchange has amended Rule 60 to provide that the Exchange will ''autoquote'' or automatically update the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer).[6] When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price.[7]

The NYSE believes that both NYSE Direct+ and autoquoting have the potential to impact the functioning of the NYSE's auction market, as they involve, without specialist or trading crowd intervention, changes to the depth of the market and prices at which securities may trade. NYSE Direct+ involves automatic executions of limit orders of 1,099 shares or less against the Exchange's best bid or offer.[8] According to the Exchange, NYSE Direct+ executions have the potential to change the depth of the market, as well as the tick and last reported sale. Autoquoting involves the automatic adjustment of the Exchange's disseminated bids/offers as new limit orders are received onto the specialist's book.

In anticipation of the rollout of NYSE Liquidity Quote,SM as approved in SR–NYSE–2002–55,[9] the Exchange would like to test the impact of autoquoting without the impact of NYSE Direct+ occurring at the same time. To do so, the Exchange is proposing to disengage NYSE Direct+ in five actively-traded stocks during a one-week pilot program. The stocks, which include one company from each of the Exchange's five largest specialist units, are American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange represents that it will study the impact of autoquoting on the Exchange floor [10] with regard to liquidity, continuity, spread, depth, number of trades, and other variables.

The Exchange notes that any NYSE Direct+ order (''auto-ex order'') that would be entered during the one-week pilot in the five stocks mentioned above would automatically be converted to a SuperDOT order during that time for representation by the specialist in the Exchange's auction market.[11] Further, the Exchange intends to implement the one-week pilot as soon as practicable after Commission approval and will notify the Exchange's membership at least one week prior to the actual implementation date of the one-week pilot.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and

2001) SR–NYSE–00–18). The Direct+ pilot was subsequently extended for an additional year by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50), and recently extended for an additional year by Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47).

[5] Liquidity quotes represent additional buying and selling interest below the best bid and above the best offer.

[6] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (order approving SR–NYSE–2002–55).

[7] *See id.*

[8] *See supra* note 4.

[9] *See supra* note 6.

[10] Telephone conversation among Sonia Trocchio, Special Counsel, Division, Commission, Donald Siemer, Director, Rule Development and Jeffrey Rosenstruck, NYSE, dated May 2, 2003.

[11] Currently, under Exchange Rule 1000, auto-ex orders that cannot be immediately executed shall be converted into SuperDot orders and displayed as limit orders in the auction market. Telephone conversation among Sonia Trocchio, Special Counsel, Division, Commission, Donald Siemer, Director, Rule Development and Jeffrey Rosenstruck, NYSE, dated May 2, 2003.

[12] *See* Amendment No. 1, *supra* note 3.

[13] 15 U.S.C. 78f(b)(5).

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 NYSE. All submissions should refer to File No. SR–NYSE–2003–10 and should be submitted by May 30, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[15]

The Commission believes that the proposal should help the NYSE to maintain a fair and orderly market by enabling the NYSE to test its autoquoting feature without the interruption of NYSE Direct+, which automatically changes the depth of market, as well as the tick and last reported sale in these stocks. In addition, the Commission notes that NYSE has represented that it will notify members at least one week in advance of the implementation date of the pilot.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange, without undue delay, to assess the impact of autoquoting on the Exchange's auction market, particularly with regard to liquidity, continuity, spread, depth, number of trades, and other such variables.

Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[16] to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing, on a pilot basis for seven days.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended, (File No. SR–NYSE–2003–10) be approved as a one week pilot, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11588 Filed 5–8–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78f(b)(5).

[15] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47792; File No. SR–NYSE–2002–41]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Specialist Combination Review Policy in NYSE Rule 123E

May 2, 2003.

I. Introduction

On August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Specialist Combination Review Policy (''Policy''). On January 27, 2003 the NYSE amended the proposed rule change.[3] On March 20, 2003, the rule proposal, as amended, was published for comment in the **Federal Register**.[4] The Commission received no comments on the proposal. This order approves the amended proposed rule change.

II. Description of the Proposed Rule Change

NYSE Rule 123E sets forth the NYSE's Specialist Combination Review Policy. [5] Currently, the Policy requires the Quality of Markets Committee (''QOMC'') to review proposed specialist unit combinations that exceed five, ten, or fifteen percent tier levels in any one of four concentration measures.[6]

The proposed rule change removes the QMOC review requirement for combinations that result in an increase in any concentration measure of less than two percentage points within a tier level. If, however, the percentage change increase results in the unit moving into a higher tier classification, a review will result. The proposed rule change also eliminates capital position requirements for the various tiers in light of recent amendments of other Exchange requirements to Exchange Rules 104.21 and 104.22.[7] The proposed rule change also delegates to the Market Performance Committee (''MPC'') the responsibility of reviewing and approving, or disapproving in writing, a specialist combination to see what effect it will have on market quality. Furthermore, the proposed rule change amends the Policy to require that proponents of the combined units

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 24, 2003 (''Amendment No. 1''). In Amendment No. 1 the Exchange provided a new Exhibit A that completely replaced and superseded the proposed rule language in the original filing.

[4] *See* Securities Exchange Act Release No. 47547 (March 20, 2003), 68 FR 15027 (March 27, 2003).

[5] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31) (formal codification as Rule 123E); Securities Exchange Act Release No. 34167 (June 6, 1994), 59 FR 30625 (June 14, 1994) (SR–NYSE–93–45) (permanent pilot approval).

[6] The concentration measures include a specialist unit's share of: (1) Common stocks listed on the Exchange; (2) the 250 most active listed common stocks for the last 12 months; (3) total listed common stock share volume for the last 12 months; and (4) total listed common stock dollar volume for the last 12 months.

[7] *See* Securities Exchange Act Release No. 43098 (July 31, 2000), 65 FR 49044 (August 10, 2000) (SR-NYSE–99–46). *See also* Exchange Rule 104.22 that requires any new specialist entities that result from merger, acquisition, consolidation, or other combination of specialist assets to maintain net liquid assets (NLA) equivalent to the greater of either: (1) The aggregate of the NLA of the specialist entities prior to their combination, or (2) the capital requirement prescribed by Rule 104.

maintain separate corporate relations departments and disclose whether the existing clerical support of the combined units will be maintained or increased. Additionally, the rule now describes the type of information the QMOC considers in determining whether the public interest factor has been met. Finally, the proposal adopts factors the MPC must consider when assessing the impact of the proposed combination upon specialist performance and market quality with respect to the subject securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is a reasonable modification of the Policy. The Commission does not believe that consolidations among specialist units are inherently harmful, and believes that in certain situations they can be beneficial, particularly for those units with limited capital. At the same time, the Commission recognizes that undue concentration may have negative effects on market quality by, among other things, hampering competition among specialists and reducing incentives for specialists to provide better markets.

The Commission believes that the modifications are reasonably designed to result in approval of proposed combinations that will not have an adverse impact on market quality or result in undue concentration. Although the Commission recognizes that the Policy, as amended, could result in prohibiting a combination from occurring, the Commission believes the factors for consideration in reviewing the impact of concentration are related to legitimate market quality issues that the NYSE should be permitted to weigh. The proposal should also benefit specialist units, as well as the MPC, because it sets forth the specific factors the MPC must consider when reviewing specialist combinations. The Commission also notes that the MPC denials must be in writing, and must be communicated to the specialist. This will ensure that the basis for any denial is provided to the specialist unit.

The Commission believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act,[10] in that it establishes review procedures to prevent potential under capitalization of specialist units that could hinder market quality. Accordingly, any potential burden on competition resulting from the proposal is justified as necessary and appropriate under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the amended proposed rule change (SR–NYSE–2002–41) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11589 Filed 5–8–03; 8:45 am]

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[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47795; File No. SR–PCX–2002–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Elimination of the Lead Market Maker Concentration Level of 15% of the Issues Traded on the Exchange's Options Floor

May 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to eliminate the concentration limit for the number of issues that a Lead Market Maker (''LMM'') on the Exchange may be allocated. Below is the text of the proposed rule change. Proposed new language is *italicized.* Proposed deletions are in [brackets].

* * * * *

Pacific Exchange, Inc. Rules of the Board of Governors

* * * * *

Rule 6.82 (a)–(d)—No change.

(e) Allocation:

(1) *Allocation.* The allocation of option issues to LMMs [shall] *will* be effected by the Options Allocation Committee. The Options Allocation Committee [shall] *will* select that candidate who appears best able to perform the function of an LMM in the designated option issue. Factors to be considered for selection include, but are not limited to, the following: experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluations made pursuant to [OFPA B–13] *Rule 6.100;* and any other criteria specified in this Rule. *The Options Allocation Committee will also consider the number and quality of issues that have been allocated, reallocated or transferred to a Lead Market Maker.*

(2) *Transfer of Issues.* Issues allocated to an LMM may not be transferred to another firm or between nominees without the express approval of the Options Allocation Committee.

[(3) *Concentration of Issues.* In the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than fifteen percent (15%) of the

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated April 28, 2003.

number of issues traded on the Options Floor.]

[(4)] (*3*) *Evaluation of LMMs.* The Options Allocation Committee shall monitor and evaluate the performance of LMMs with regard to quality of markets and shall do so at least semiannually. In reviewing and evaluating an LMM's performance, the Committee will consider, among other things, the LMM's evaluation conducted pursuant to [Options Floor Procedure Advice B–13] *Rule 6.100,* the LMM's compliance with Exchange Rules, including, but not limited to, Rule 6.32 through 6.40 and Article XI, Section 2 of the Exchange Constitution.

* * * * *

Guidelines of the Options Allocation Committee

The Options Allocation Committee has developed a guideline to assist the Committee in its review of matters that affect the level of LMM concentration on the Exchange. The Committee intends to evaluate matters related to the LMM concentration by considering a number of factors, including the number of issues allocated to an LMM and the contract volume in the products allocated to a LMM.

Under the Committee's guidelines, the Committee intends to take into consideration an LMM's level of concentration if there is an event or proposal that would cause an LMM to meet either of the following criteria:

1. The number of issues allocated to an LMM (and any affiliated LMM) is 25% or more of the total number of issues traded on the PCX;

2. The volume in the issues allocated to an LMM (and any affiliated LMM) is 50% or more of the total volume of the PCX or 25% or more of the total volume in equity option issues of the PCX.

If there is an event or proposal that would cause an LMM to reach either of the two above criteria (such as, for example, the allocation to an LMM of additional issues or a proposal involving a transfer of interest in an LMM organization), the Committee will carefully evaluate the level of concentration that would result. If the Committee determines that the event or proposal would result in an unacceptable level of concentration, the Committee could exercise its discretion and take action to lower the resulting level of concentration or to deny the applicable proposal. The Committee retains the discretion to review an LMM's level of concentration at any time regardless of whether the above criteria are satisfied.

* * * * *

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 PCX 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 PCX 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

Current PCX Rule 6.82(e) provides that the allocation of option issues to an LMM is effected by the Options Allocations Committee (''OAC''). Under this rule, the OAC selects the candidate who appears best able to perform the function of an LMM in a particular designated option issue. Factors to be considered for selection include, but are not limited to: experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluations made pursuant to Options Floor Procedure Advice (''OFPA'') B–13 (renumbered Rule 6.100) [4], and any other criteria specified in Rule 6.82. In addition to the above, the rule provides that in the absence of extraordinary circumstances, as determined by the OAC, the OAC may not allocate more than 15% of the number of issues traded on the Options Floor to any LMM.[5]

The options industry continues to experience a consolidation and withdrawal of liquidity providers and therefore, the Exchange is proposing a rule change that would eliminate the 15% LMM concentration limit and replace it with a provision that would require the OAC to consider the number and quality of issues that it has allocated, reallocated or transferred to an LMM. Consistently, the Exchange seeks to apply a guideline developed by the OAC in order to assist it in its review of matters that affect the level of LMM concentration on the Exchange. The guideline requires the OAC to take into consideration the concentration of an LMM's issues if there is an event or proposal that would cause an LMM to meet either of the following criteria: (i) the number of issues allocated to an LMM (and any affiliated LMM) is 25% or more of the total number of issues traded on the PCX; or (ii) the volume in the issues allocated to an LMM (and any affiliated LMM) is 50% or more of the total volume of the PCX or 25% or more of the total volume in equity option issues of the PCX. If an LMM meets either of the two above criteria, the guideline requires the OAC to evaluate the level of concentration and determine whether the event or proposal would result in an unacceptable level of concentration. If so, the OAC could exercise its discretion and take action to lower the resulting level of concentration or to deny the applicable proposal. Pursuant to the guideline, the OAC will retain the discretion to review an LMM's level of concentration at any time regardless of whether the above criteria are satisfied.

The Exchange believes that the rule change and accompanying guideline are necessary to assure not only that the OAC has the discretion to allocate an issue to the most qualified LMM, but also to maintain a competitive advantage relative to other options exchanges with respect to the number of issues that an LMM may be allocated.[6]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) [7] of the Act, in general, and further the objectives of section 6(b)(5),[8] in particular, in that they are designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[4] *See* Securities and Exchange Act Release No. 44345 (May 23, 2001), 66 FR 30037 (June 4, 2001).

[5] In 2000, the Commission approved a PCX proposal to increase the cap on the percentage of issues per LMM from 10% to 15%. *See* Securities and Exchange Act Release No. 42583 (March 28, 2000), 65 FR 17689 (April 4, 2000).

[6] The Exchange notes that the Chicago Board Options Exchange (''CBOE'') has a guideline, which dates back to 1999, that has no mandatory cap on the number of issues that may be allocated to a Designated Primary Market-Maker (''DPM''). The CBOE guideline may trigger a review with the relevant committee when, *inter alia,* the number of classes allocated to a DPM is 25% or more of the total number of classes traded on CBOE. *See* CBOE Regulatory Guideline 99–135.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The PCX neither solicited nor received written comments on the proposed rule change.

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 self-regulatory organization 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 proposal 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 PCX. All submissions should refer to File No. PCX–2002–25 and should be submitted by May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47794; File No. SR–Phlx–2003–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to the Amendment of Price Criteria for Certain Securities that Underlie Options Traded on the Exchange

May 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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. On April 30, 2003, the Phlx filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, has been filed by Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[4] 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

The Phlx proposes to amend Commentary .01 to Phlx Rule 1009 to allow the Exchange to list options series on covered securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933 (''Covered Securities''),[5] where the closing market price of the underlying Covered Securities was at least $3.00 per share for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the Options Clearing Corporation (''OCC''). The listing criteria will remain the same for non—Covered Securities.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

* * * * *

Rule 1009. Criteria for Underlying Securities

(a) No change.

(b) No change.

(c) No change.

Commentary:

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3, or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

(1) No change.

(2) No change.

(3) No change.

(4) *(i) If the underlying security is a ''covered security'' as defined in Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five (5) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this rule, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

[Either (i)]*(ii) If the underlying security is not a ''covered security,''* the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or [(ii)](a) the underlying security meets

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jurij Trypupenko, Counsel and Director of Litigation andOperations, Legal Department, Phlx to Terri Evans, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a technical correction by inserting rule text that had been inadvertently omitted in the original filing.

[4] 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[5] Section 18(b)(1)(A) of the Securities Act of 1933 (the ''1933 Act'') provides that ''[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *.'' 15 U.S.C. 77r(b)(1)(A). The term ''Covered Security,'' for the operation of proposed Commentary .01 to Phlx Rule 1009, will not include those securities defined in Section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

the guidelines for continued listing in Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months proceeding the date of selection has been at least 5,000 contracts.

(5) No change.

.02 No change.

.03 No change.

.04 No change.

.05

(a) through (c) No change.

(d) In the case of a Restructured Transaction that satisfies either or both of the conditions of subparagraphs (a)(1) or (2) above in which shares of the restructure security are sold in a public offering or pursuant to a rights distribution: (i) the Exchange may assume the satisfaction of one or both of the requirements of paragraph (1) and (2) of Commentary .01 above on the date the restructure security is selected for options trading only if (A) the applicable conditions set forth in paragraph (c)(i) above are met with respect to whichever of these requirements is assumed to be satisfied, or (B) the condition set forth in paragraph (c)(ii) above is met, in either case subject to the limitations stated in said paragraph (c); (ii) the Exchange may certify that the market price of the restructure security satisfies the requirement of paragraph (4) of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the restructure security has traded ''regular way'' on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the restructure security was at least $7.50 *or, if the restructure security is a ''covered security'' as defined in paragraph (4) of Commentary .01 above, the market price of the restructure security was at least $3.00;* and (iii) the Exchange may certify that the trading volume of the restructure security satisfies the requirement of paragraph (3) of Commentary .01 above only if the trading volume in the restructure security has been at least 2,400,000 shares during a period of 12 months or less ending on the date the restructure security is selected for options trading.

.06 No change.

.07 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the pricing requirement to initially list options overlying Covered Securities that have traded at a price of $3.00 or higher for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the OCC. The proposal would allow the Exchange to act competitively in listing options pursuant to a listing standard similar to one that has been adopted by other options exchanges.[6]

The Exchange is proposing to amend its pricing requirement for underlying securities in Commentary .01 to Phlx Rule 1009 to provide that, for underlying securities that are deemed to be Covered Securities, the closing market price of the underlying security must be at least $3.00 per share for the five consecutive business days prior to the date on which Phlx submits an option issue certification to the OCC. The $7.50 price per share requirement would continue to apply to underlying securities that are not Covered Securities. In particular, for non-Covered Securities, Commentary .01 to Phlx Rule 1009 would continue to require that the market price per share of any underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.[7] When the $7.50 price requirement was first implemented, the listed options market was in its infancy. Now, more than twenty-eight years after the Phlx first started trading listed options, the Exchange believes that the options market is a mature market with sophisticated investors. The Exchange does not believe that the $7.50 initial listing criteria serves to accomplish its presumed intended purpose of preventing the proliferation of option issues on overlying securities that lack liquidity needed to maintain fair and orderly markets. Phlx now seeks to move away from the current approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities that underlie the option that the Exchange will list.

Due to recent trends in the securities markets, which include, among other things, a precipitous decline in the price of many securities, there has been a marked increase in the number of underlying securities that, but for the current pricing standard, would otherwise qualify for options listing on the Exchange. The Phlx states that changing the pricing standard to the proposed $3.00 market price per share requirement would allow it to evaluate whether to list options on a greater number of classes without compromising investor protection. In doing so, the Exchange would endeavor to ensure that its own systems and those of the Options Price Reporting Authority have the capacity to handle the potential increased capacity requirements.

The Exchange notes that although this proposal amends the minimum closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price before its overlying option can be listed on the Exchange, the Phlx will otherwise continue to maintain its initial listing standards. The Exchange does not

[6] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); and 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19).

[7] In the alternative to the $7.50 price requirement, an option on a non-Covered Security may meet the requirements provided in Commentary .01 to Phlx Rule 1009 when: (a) The underlying security meets the guidelines for continued listing in Phlx Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts. Telephone conversation among Jurij Trypupenko, Counsel and Director of Litigation and Operations, Legal Department, Phlx, Terri Evans, Assistant Director, Division, Commission, and Tim Fox, Attorney, Division, Commission on April 28, 2003.

propose to amend any of the other criteria in Commentary .01 to Phlx Rule 1009, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months.

Moreover, the Exchange believes that requiring in the proposal that the underlying security be listed on the New York Stock Exchange, Inc. (''NYSE''), the American Stock Exchange LLC (''Amex''), or the Nasdaq Stock Market, Inc. (''Nasdaq''), as provided for in the definition of ''Covered Security'' from Section 18(b)(1)(A) of the 1933 Act [8] would ensure that the underlying security meets the highest listing standards in the securities industry. Should the underlying security not qualify as a Covered Security, the $7.50 market price per share standard would still apply.

The Exchange believes that the proposed $3.00 market price per share standard is also consistent with the Phlx maintenance and delisting criteria found in Phlx Rule 1010, which are used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for listing. Commentary .02 to Phlx Rule 1010 sets a $3.00 market price per share of the underlying security threshold for determining whether the Exchange may continue listing and trading options on an underlying security that has been previously approved for options trading under Phlx Rule 1009. As long as a $3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed $3.00 should be the threshold standard for initial listing as well.

Consistent with the listing standards proposed by other options exchanges,[9] the Exchange has proposed, as a safeguard against price manipulation, that the underlying security has a closing market price of at least $3.00 per share for the five consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The Exchange believes that this ''look back'' period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change, as amended, would encourage specialists to delist inactive option classes, particularly those classes in which the market price of the underlying security is below $7.50. In particular, under Phlx Rule 1009 as it currently exists, a specialist on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below $7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least $7.50 for the majority of business days during the preceding three months. The Phlx believes that the proposed $3.00 price standard and the five-day look-back period would provide a reliable test for stability, would present a more reasonable time period for qualifying the price of an underlying security, and makes sense in today's economic conditions. The Exchange notes that the Commission recently granted Phlx and other options exchanges approval to list additional series on an option class when the market price of the underlying security is below $3.00, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add a new series, including the $3.00 price requirement.[10]

Finally, for the purposes of consistency within the Phlx rules, the Exchange proposes to amend Commentary .05 to Phlx Rule 1009 which relates to Restructure Securities. Currently, Commentary .05 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of Commentary .01 to Phlx Rule 1009, and specifically references the $7.50 market price per share in Commentary .05(d). In order to make all of Phlx Rule 1009 consistent with the pricing standard change of this proposal, the amended rule would reflect that the market price standard for Restructure Securities that are ''covered securities'' will also be reduced from $7.50 to $3.00.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that by changing listing standards for Covered Securities, the Exchange can provide investors with those options that are most useful and demanded by them without sacrificing investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has been filed by the Exchange as a ''non-controversial'' rule pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] Consequently, because the foregoing rule change, as amended: (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 thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4 thereunder.[16]

The Phlx has requested that the Commission waive the five-day pre-filing notice requirement and the thirty-day operative waiting period. The Commission is exercising its authority

[8] *See* note 5 *supra*.

[9] *See* note 6 *supra*.

[10] *See* Securities Exchange Act Release No. 46789 (November 7, 2002), 67 FR 69284 (November 15, 2002) (SR–Phlx–2002–71). The Exchange represents that this rule (Commentary .02 to Phlx Rule 1010)is consistent with similar rules regarding listing and maintenance standards of the Amex, International Securities Exchange, Inc. (''ISE''), Chicago Board Options Exchange, Inc. (''CBOE'') and the Pacific Exchange, Inc. (''PCX''). *See* Commentary .02 to Amex Rule 916; ISE Rule 503(c); Interpretation and Policy .02 to CBOE Rule 5.4; and Commentary .02 PCX Rule 3.7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

to waive the five-day pre-filing requirement and believes that it is consistent with the protection of investors and the public interest to accelerate the operative date since the proposed rule change, as amended, is similar to the programs of other options exchanges, and raises no new regulatory issues.[17] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–27 and should be submitted by May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11587 Filed 5–8–03; 8:45 am]

BILLING CODE 8010–01–P

[17] For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3495]

State of Texas

Johnson County and the contiguous counties of Bosque, Ellis, Hill, Hood, Parker, Somervell and Tarrant in the State of Texas constitute a disaster area due to severe thunderstorms that occurred on April 23, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 3, 2003, and for economic injury until the close of business on February 3, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 349511 and for economic injury the number is 9V1400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 2, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–11597 Filed 5–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VI—Houston District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI, Houston District Advisory Council, located in the geographical area of Houston, Texas will hold a public meeting at 9 a.m. on Wednesday, May 28, 2003. The meeting will be held in the Conference Room at the Small Business Administration, 87011 S. Gessner, Suite 1200, Houston, Texas 77074. The meeting will be conducted to discuss such matters that may be presented by members of the District Advisory Council, staff of the U.S. Small Business Administration, and others attending. Anyone wishing to make an oral or written presentation to the Board must contact Mr. Milton Wilson in writing by letter or fax no later than May 19, 2003, in order to be put on the agenda. Mr. Milton Wilson, District Director, U.S. Small Business Administration, 87011 S. Gessner, Suite 1200 Houston, TX 77074, (713) 773–6500 ph. or (713) 773–6550 fax.

Candace H. Stoltz,

Director, Advisory Councils.

[FR Doc. 03–11598 Filed 5–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, May 22, 2003 at 2 p.m. in the COSE conference room located at 200 Tower City Center, 50 Public Square, Cleveland, OH 44113–2291, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Gilbert Goldberg in writing or by fax, in order to be put on the agenda. Gilbert Goldberg, District Director, U.S. Small Business Administration, Cleveland District Office, 1111 Superior Avenue East, Suite 630, Cleveland, OH 44114, phone (216) 522–4182, fax (216) 522–2038, e-mail *gilbert.goldberg@sba.gov*.

For more information, see our Web site at *www.sba.gov/ombudsman*.

Dated: May 5, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–11599 Filed 5–8–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4188]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct a joint, open meeting at 1:30 p.m. on Thursday, May 22, 2003, at the Island Grand Beach Resort and Conference Center; 5600 Gulf Boulevard, St. Pete Beach, Florida. The meeting will be held in connection with the Radio Technical Commission for Maritime Services (RTCM) 2003 Annual Assembly Meeting. The purpose of the meeting is to review the outcome of the Seventh Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue (COMSAR), that occurred in January 13–17, 2003, at IMO headquarters in London, England. Additionally, the meeting is to prepare for the 49th session of the IMO Subcommittee on Safety of Navigation (NAV 49), which is scheduled for June 30–July 4, 2003, at the IMO Headquarters in London.

Items of principal interest on the COMSAR agenda are:

- Maritime Safety Information for GMDSS;
- Development of a procedure for recognition of mobile satellite systems;
- Revision of performance standards for NAVTEX equipment;
- Emergency radiocommunications, including false alerts and interference;
- Large passenger ship safety;
- Issues related to maritime security;
- Developments in maritime radiocommunication systems and technology, including long-range tracking;
- Matters concerning Search & Rescue;
- Planning for the 8th session of COMSAR.

Items of principal interest on the NAV 49 agenda are:

- Routing of ships, ship reporting and related matters;
- Requirements for the display and use of Automatic Identification System (AIS) information on shipborne navigational displays;
- Places of refuge;
- Anchoring, mooring and towing equipment;
- Revision of performance standards for radar reflectors;
- Review of performance standards for radar equipment;
- International Telecommunication Union (ITU) matters, including Radiocommunication ITU–R Study Group 8 matters;
- Large passenger ship safety: Effective voyage planning for large passenger ships;
- Measures to enhance maritime security;
- World-wide radionavigation system;
- Casualty analysis;
- Guidance on early abandonment for bulk carriers.

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil.*

Information for the RTCM meeting can be found at *https://www.rtcm.org/index2.html.*

Dated: May 1, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–11606 Filed 5–8–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4307]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, May 20, 2003, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is for members of the SHC to discuss and decide upon changes to the SHC charter regarding SHC subcommittee structure. The proposed change to the subcommittee structure is described below.

The SHC has presently established six subcommittees, the Subcommittee for the Prevention of Marine Pollution, the Subcommittee on Safety of Life at Sea, the Maritime Law Subcommittee, the Subcommittee on Tonnage and Measurement, the Subcommittee on the United Nations Conference on Trade and Development (UNCTAD) and the Subcommittee on Ocean Dumping. This subcommittee structure was established at the time of the original SHC charter in 1958, and has not been amended since the mid-1970's. The Subcommittees on Tonnage Measurement and UNCTAD have not met in over 10 years. The primary focus of the SHC is to assist in the development of and receive public input on U.S. negotiating positions at the International Maritime Organization (IMO) and on various international instruments (*i.e.*, treaties, conventions and protocols) administered by the IMO. Over the last 15 years, the IMO has added a number of committees and subcommittees, whose functions are not directly addressed by the current subcommittees contained in the SHC Charter.

At this meeting SHC members will be asked to discuss and decide whether to:

1. Disestablish the Subcommittee on Tonnage and Measurement and the Subcommittee on UNCTAD.

2. Establish the following new subcommittees:

a. The Subcommittee on IMO Administration and Budgeting. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Assembly and Council.

b. The Subcommittee on IMO Technical Cooperation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Technical Cooperation Committee.

c. The Subcommittee on Facilitation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter in regards to United States participation in the Convention on Facilitation of International Maritime Traffic, 1965, and for matters before the IMO Facilitation Committee.

d. The Subcommittee on the Carriage of Bulk Liquids and Gases. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Bulk Liquids and Gases Subcommittee.

e. The Subcommittee on Ship Design and Equipment. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Design and Equipment Subcommittee.

f. The Subcommittee on Dangerous Goods, Solid Cargos and Containers. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Dangerous Goods, Solid Cargos and Containers Subcommittee.

g. The Subcommittee on Radio Communications and Search and Rescue. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter regarding United States participation in the International Convention on Maritime Search and Rescue, 1979 and for matters before the IMO Radio Communications and Search and Rescue Subcommittee.

h. The Subcommittee on Fire Protection. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Fire Protection Subcommittee.

i. The Subcommittee on Flag State Implementation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Flag State Implementation Subcommittee.

j. The Subcommittee on the Safety of Navigation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Safety of Navigation Subcommittee.

k. The Subcommittee on Stability, Load Lines and Fishing Vessel Safety. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter regarding United States participation in the International Convention on Load Lines, 1966, the International Convention on Tonnage Measurement, 1969 and for matters before the IMO Subcommittee on Stability and Loadlines and on Fishing Vessels Safety.

l. The Subcommittee on Standards of Training, Certification and Watchkeeping. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter regarding United States participation in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and for matters before the IMO Standards for Training and Watchkeeping Subcommittee.

3. Designate the head of the United States delegation to the relevant IMO committee or subcommittee as the chairperson of the subcommittee with cognizance over that IMO committee or subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander Frederick J. Kenney, Executive Secretary, Shipping Coordinating Committee, U.S. Department of State (OES/OA), Room 5805, 2201 C Street, NW., Washington, DC 20520, by e-mailing *kenneyfj@state.gov*, or by calling 202–647–3946.

Dated: May 1, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–11607 Filed 5–8–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4361]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee, Subcommittee on Maritime Safety, will conduct an open meeting at 9:45 a.m. on Tuesday May 20, 2003, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 77th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 28 to June 6, 2003, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions for the Maritime Safety Committee will be discussed. Items of particular interest are:

—Adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS) regarding navigation bridge visibility and ship longitudinal strength evaluation and repair.
—Adoption of amendments to the International Convention on Loadlines regarding the regulations for determining loadlines on all ships.
—Large passenger ship safety;
—Bulk carrier safety;
—Measures to enhance maritime security–Outcome of the 2002 Conference;
—Proposed IMO Model Audit Scheme;
—Piracy and armed robbery against ships;
—Reports of seven subcommittees-Dangerous Goods, Solid Cargoes and Containers; Radiocommunications and Search and Rescue; Fire Protection; Standards of Training and Watchkeeping; Ship Design and Equipment; Bulk Liquids and Gases; and Flag State Implementation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: May 1, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–11608 Filed 5–8–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14824; Airspace Docket No. 00–AWA–3]

RIN 2120–AA66

Designation of Oceanic Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Provision of Air Traffic Services in Oceanic Airspace.

SUMMARY: This action corrects the Notice of Provision of Air Traffic Services in Oceanic Airspace, published in the **Federal Register** on April 3, 2003. This notice informs airspace users of the type of air traffic control (ATC) service provided in the oceanic airspace controlled by the United States of America.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On April 3, 2003, Docket No. FAA–2003–14824; Airspace Docket No. 00–AWA–3, **Federal Register** Document 03–8139,

was published in the **Federal Register** informing airspace users of the type of ATC service provided in oceanic airspace controlled by the United States (68 FR 16340). The notice inadvertently contained two minor errors in the text. This action corrects those errors.

Correction to the Notice

Accordingly, pursuant to the authority delegated to me, the Notice of Provision of Air Traffic Control, as published in the **Federal Register** on April 3, 2003 (68 FR 16340); **Federal Register** Document 03–8139, is corrected as follows:

[Correction]

Page 16341, third column, second line, under the heading Miami Oceanic CTA/FIR, Aircraft operating in the Miami Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes: change ''Class'' to read ''Class E.''

Page 16342, first column, fourth line, fourth word under the heading Oakland/Nauru UTA Airspace Area Delegated to Oakland Center Above FL245: change ''ATA'' to read ''ATC.''

Issued in Washington, DC, on May 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11639 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–26]

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: Denise Emrick (202) 267–5174, 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 May 6, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14909.
Petitioner: America West Airlines.
Section of 14 CFR Affected: 14 CFR 121.356.
Description of Relief Sought: To permit America West Airlines to accept and operate two Airbus A320 airplanes, that have Traffic Alert and Collision Avoidance System II equipment installed after April 30, 2003, that does not meet Technical Standard Order C–119b version 7.0.

Docket No.: FAA–2002–14227.
Petitioner: Kenmore Air Harbor, Inc.
Section of 14 CFR Affected: 14 CFR 135.154(b)(2).
Description of Relief Sought: To permit Kenmore Air Harbor, Inc. to operate nine single-engine, turbine-powered seaplanes after March 29, 2005, without being equipped with an approved terrain awareness and warning system that meets the requirements for class B equipment in Technical Standard Order C151, both inside and out of the United States.

Docket No.: FAA–2003–14366.
Petitioner: Baby B'Air.
Section of 14 CFR Affected: 14 CFR 121.311(c)(1), 91.107(a)(3)(iii)(B) and (a)(3)(iii)(C)(3); 121.311(b)(1) and (b)(2)(ii).
Description of Relief Sought: To allow people to use the Baby B'Air flightvest (a vest-type, lap-held child restraint system) that is not manufactured to U.S. standards and does not conform to all applicable Federal motor vehicle safety standards, is not certificated for use in motor vehicles and aircraft; and has not been accepted by the FAA during all phases of flight, including critical phases of flight.

[FR Doc. 03–11636 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at Acadiana Regional Airport, New Iberia, LA.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Acadiana Regional Airport, New Iberia, Louisiana, under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 9, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Mouton, Airport Director, Acadiana Regional Airport, at the following address:

Mr. Robert Mouton, Airport Director, 5217 North South Taxi Road, New Iberia, LA 70560.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Saupp, Program Manager, Federal Aviation Administration, LA/NM ADO, ASW–640, 2601 Meacham Blvd., fort Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Acadiana Regional Airport, New Iberia, Louisiana, under the provisions of the AIR 21.

On April 25, 2003, the FAA determined that the request to release property at Acadiana Regional Airport submitted by the Iberia Parish Airport Authority met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than August 15, 2003.

The following is a brief overview of the request:

The Iberia Parish Airport Authority requests the release of 2.277 acres of airport property. The release of property will allow for an industrial development project to proceed. The sale is estimated to provide $50,000 for airport maintenance.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Acadiana Regional Airport.

Issued in Fort Worth, Texas on April 29, 2003.

Naomi L. Saunders

Manager, Airports Division

[FR Doc. 03–11646 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Solano County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Solano County, California.

FOR FURTHER INFORMATION CONTACT: Maiser Khaled, Chief District Operations—North, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) for a proposed project to improve the Interchange of I–80, I–680, and State route (SR) 12 in Solano County, California. The I–80/I–680/SR–12 Interchange experiences traffic congestion due to regional traffic that includes the San Francisco Bay Area commuter traffic and recreational traffic traveling between the San Francisco Bay Area and Lake Tahoe. The objectives of the proposed project are to alleviate congestion, improve safety, and provide for the predicted traffic demand.

Alternatives that may be considered in the EIS include (1) taking no action; and (2) a range of alternatives that include two or more of the following components: reconfiguration and expansion of the existing I–80/I–680 interchange widening of I–80 (may include auxiliary lanes, high occupancy vehicle (HOV) lanes, collector/distributor roads, and viaducts), construction of an I–680 viaduct, construction of a new I–680 to SR–12 East connector roadway, reconstruction of the interchange on I–680 at Red Top Road, and on I–80 at Green valley/Suisun Valley Road, Abernathy Road and West Texas Street. Alternatives will include options for reconfiguration or relocation of the existing truck scales to improve access and egress.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public scoping meeting will be held on May 12, 2003, from 6 p.m. to 8:30 p.m. at Rodriguez High School, 5000 Red top Road, Fairfield, California. Additional public meetings will be held. In addition, a public hearing will be held. The draft EIS will be available for public and agency review prior to the public hearing. Public notice will be given of the exact time and location of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Dated: Issued on: May 5, 2003.

Maiser Khaled,

Chief—District Operations, North Sacramento, California.

[FR Doc. 03–11532 Filed 5–8–03; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on March 4, 2003 (68 FR 10304).

DATES: Comments must be submitted on or before June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 4, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking

OMB approval. *See* 68 FR 10304. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads and States.

Form(s): None.

Abstract: Under 49 CFR part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Annual Estimated Burden Hours: 155 hours.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.73; 6180.74; 6180.94A, and 6180.94B.

Abstract: The information collection requirements contained in pre-employment and ''for cause'' testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Annual Estimated Burden Hours: 34,378 hours.

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). *See* 49 CFR part 232, appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR part 232, appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the Order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

Annual Estimated Burden Hours: 67 hours.

ADDRESSES: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on May 6, 2003.

Kathy A. Weiner,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–11635 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34334]

Lancaster and Chester Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Lancaster and Chester Railway Company (L&C), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Norfolk Southern Railway Company (NS) approximately 30.8 miles of rail line in Kershaw and Lancaster Counties, SC. The line extends from approximately milepost SB–58.7, at Kershaw, to approximately milepost SB–89.5, at Catawba, SC. The line connects to L&C's existing rail line at L&C Chester District Connection, at approximately milepost SB–76.4, near Lancaster. L&C currently operates the subject line under a lease from NSR.[1]

L&C certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.[2]

L&C states that it expects to consummate the transaction: (1) By the end of April 2003, but not before the Board renders its decision on the petition for waiver; (2) if it satisfies the requirements under CFR 1150.42(e); or (3) on April 21, 2003 (7 days after the exemption was filed). As a result of the waiver of the labor notice requirements, the exemption in this proceeding was effective on April 28, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d)

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[1] L&C leases the line pursuant to a notice of exemption in *Lancaster and Chester Railway Company—Lease and Operation Exemption—Norfolk Southern Railway Company*, STB Finance Docket No. 33969 served and published in the **Federal Register** on February 7, 2001 (66 FR 9410).

[2] In a decision served on April 28, 2003, the Board granted L&C's request to waive the labor notice requirements of 49 CFR 1150.42(e). The Board noted that no NS employees have worked on the line for more than 2 years, and that, when L&C leased the line, required notice was sent to national offices of all labor unions representing employees on the line and was posted at the workplace of employees on the line in compliance with 49 CFR 1150.42(e).

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34334, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider, PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: May 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–11481 Filed 5–8–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 29, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, 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 9, 2003, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0043.

Form Number: FMS 133 and FMS 135.

Type of Review: Extension.

Title: Notice of Reclamation, Electronic Funds Transfer Federal Recurring Payments (FMS 133); and Request for Debit, Electronic Funds Transfer Federal Recurring Payments (FMS 135).

Description: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FMS Form 133 is used by Treasury to notify the financial institution (FI) of the FI's accountability concerning the funds. When the FI's do not respond to the FMS 133, Treasury then prepares FMS 135 and sends it to the Federal Reserve Bank (FRB) which services the FI to request the FRB to debit the account of the FI.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 55,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 79,335 hours.

OMB Number: 1510–0045.

Form Number: FMS 150.1 and FMS 150.2.

Type of Review: Extension.

Title: Trace Request for EFT Payments.

Description: The purpose is to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The form is designed to help the financial organization locate any problem and to keep the customer (beneficiary) informed of any action taken.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 134,783.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 17,971 hours.

OMB Number: 1510–0073.

Form Number: FMS 111.

Type of Review: Extension.

Title: ETA Financial Agency Agreement.

Description: This application will collect a financial institution's identifying information, confirm a financial institution's commitment to offering the Electronic Transfer Accounts (ETAs), identify a point of contact for the ETA Program and determine when the financial institution will begin offering the ETA.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (as required).

Estimated Total Reporting Burden: 40 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–11590 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 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 Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Airlines Withdrawing Stock from Customs Custody.

DATES: Written comments should be received on or before July 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Airlines Withdrawing Stock From Customs Custody.

OMB Number: 1513–0074.

Recordkeeping Requirement ID Number: TTB REC 5620/2.

Abstract: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. The required record shows amount of spirits and wines to be traced and maintains accountability. The

record retention period for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Burden Hours: 2,500.

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.

Dated: May 2, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–11610 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 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 Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.

DATES: Written comments should be received on or before July 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.

OMB Number: 1513–0088.

Recordkeeping Requirement ID Number: TTB REC 5000/24.

Abstract: TTB is responsible for the collection of excise taxes on firearms, ammunition, distilled spirits, wine, beer, cigars, cigarettes, chewing tobacco, snuff, cigarette papers, tubes and pipe tobacco. Alcohol, tobacco firearms and ammunition excise taxes, plus alcohol, tobacco and firearms special occupational taxes are required to be collected on the basis of a return. 26 U.S.C. 5555 authorizes the Secretary of Treasury to prescribe the regulations requiring every person liable for tax to prepare any records, statements or returns as necessary to protect the revenue. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 503,921.

Estimated Total Annual Burden Hours: 503,921.

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.

Dated: May 2, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–11611 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 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 Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Liquors and Articles From Puerto Rico or the Virgin Islands.

DATES: Written comments should be received on or before July 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Liquors and Articles From Puerto Rico or the Virgin Islands.

OMB Number: 1513–0089.

Recordkeeping Requirement ID Number: TTB REC 5530/3.

Abstract: This information collection applies to persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands. Recordkeeping requirements are necessary for the verification of claims for drawback of distilled spirits excise taxes paid on such products. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 120.

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.

Dated: May 2, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–11612 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Butler, PA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation and intent to execute.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to execute 1.25 acres of land of the Department of Veterans Affairs Medical Center, Butler, Pennsylvania, for an enhanced-use leading development. The Department intends to enter into a 50-year lease of rental property with the Butler Department of Human Services, selected lessee/developer who will finance, design, develop, maintain and manager a mental health facility, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provided that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: April 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–11489 Filed 5–8–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 90

Friday, May 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D009]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

Correction

In rule document 03–7531 beginning on page 15616 in the issue of Monday, March 31, 2003 make the following corrections:

225.1101 [Corrected]

1. On page 15626, in the third column, in 225.1101, in paragraph (2), in the last line. ''unless' '' should read ''unless–''.

252.225-7000 [Corrected]

2. On page 15634, in the first column, in 252.225–7000, after paragraph (c)(2), the next entry, ''(Line Item Number Country of Origin)'' should read ''(Line Item Number)''.

[FR Doc. C3–7531 Filed 5–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Mental Health and Community Safety Initiative for American Indian and Alaska Native Children, Youth, and Families

Correction

In notice document 03–10884 beginning on page 23468 in the issue of Friday, May 2, 2003, make the following correction:

On page 23470, in the first column, under the heading **Contacts for Assistance**, in the second line from the bottom, ''*JDAVIS@HQE.GOV*'' should read, ''*JDAVIS@HQE.IHS.GOV*''.

[FR Doc. C3–10884 Filed 5–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 4209]

RIN AB–60

Amendment to the International Traffic in Arms Regulations, United States Munitions List

Correction

In rule document 02–29595 beginning on page 70839 in the issue of Wednesday, November 27, 2002 make the following corrections:

§ 121.1 [Corrected]

1. On page 70841, in the third column, in § 121.1, in paragraph (a)(33), in the sixth line, ''(250oC)'' should read ''(250°C)''

2. On the same page, in the same column, in the same section, in paragraph (b)(4), in the sixth line, ''(210°C)'' should read ''(21°C)''.

3. On page 70843, in the third column, in the same section, in paragraph (a)(3)i), in the sixth line, ''Bis(2-ch1oroethylthio)methane'' should read ''Bis(2-chloroethylthio)methane''.

4. On the same page, in the same column, in the same section, in the same paragraph, in the 10th line, ''1,3-bis (2-ch1oroethylthio)-n-propane'' should read '' 1,3-bis (2-chloroethylthio)-n-propane''.

5. On page 70844, in the third column, in the same section, in paragraph (m), in the fifth line, ''artic1es'' should read ''articles''.

[FR Doc. C2–29595 Filed 5–8–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
May 9, 2003

Part II

Department of the Treasury

31 CFR Part 103

Office of the Comptroller of the Currency

12 CFR Part 21

Office of Thrift Supervision

12 CFR Part 563

Federal Reserve System

12 CFR Parts 208 and 211

Federal Deposit Insurance Corporation

12 CFR Part 326

National Credit Union Administration

12 CFR Part 748

Commodity Futures Trading Commission

17 CFR Parts 1 and 42

Securities and Exchange Commission

17 CFR Part 270 and 31 CFR Part 103

Transactions and Customer Identification Programs; Final Rules and Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 03–08]

RIN 1557–AC06

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R–1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 2003–16]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Each bank must comply with this final rule by October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel at (202) 874–3295.

Board: Enforcement and Special Investigations Sections at (202) 452–5235, (202) 728–5829, or (202) 452–2961.

FDIC: Special Activities Section, Division of Supervision and Consumer Protection, and Legal Division at (202) 898–3671.

OTS: Compliance Policy Division at (202) 906–6012.

NCUA: Office of General Counsel at (703) 518–6540; or Office of Examination and Insurance at (703) 518–6360.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905–3590; Office of the General Counsel (Treasury) at (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Pub. L. 107–56. Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations ''setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.''

Section 326 applies to all ''financial institutions.'' This term is defined very broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2) and (c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators).

Section 326 of the Act provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the Agencies published a joint notice of proposed rulemaking in the **Federal Register** (67 FR 48290) applicable to (a) any financial institution defined as a ''bank'' in 31 CFR 103.11(c) [1] and

[1] This definition includes banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks.

subject to regulation by one of the Agencies; and (b) any foreign branch of an insured bank. On the same date, Treasury separately published an identical, proposed rule for credit unions, private banks, and trust companies that do not have a Federal functional regulator (67 FR 48299).[2] Treasury and the Agencies proposed general standards that would require each bank to design and implement a customer identification program (CIP) tailored to the bank's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all banks.[3]

Treasury and the Agencies collectively received approximately five hundred comments in response to these proposed rules (collectively referred to as the ''proposal'' or the ''proposed rule'' for ''banks''), although some commenters sent copies of the same letter to Treasury and to each of the Agencies. The majority of comments received by Treasury and the Agencies were from banks, savings associations, credit unions, and their trade associations. Most of these commenters agreed with the largely risk-based approach set forth in the proposal that allowed each bank to develop a CIP based on its specific operations.

Some commenters, however, criticized the specific requirements in the proposed rule and suggested that Treasury and the Agencies issue a final rule containing an entirely risk-based approach without any minimum identification and verification requirements. According to some of these commenters, such a thoroughly risk-based approach would give banks appropriate discretion to focus their efforts and finite resources on specific, high-risk accounts most likely to be used by money-launderers and terrorists.

Other commenters, especially those representing credit card banks and credit card issuers, asserted that the proposed minimum identification and verification requirements should be eliminated because they did not take into account the unique nature of credit card operations. They warned that these requirements, if implemented, would have a chilling effect on credit practices important to U.S. consumers and would impose significant compliance costs on their industry with little benefit to law enforcement.

By contrast, some smaller banks criticized the flexibility of the proposal and stated that a risk-based approach would leave too much room for interpretation by the Agencies. These commenters urged Treasury and the Agencies to issue a final rule establishing more specific requirements. For example, some commenters suggested that the rule prescribe risk assessment levels for each customer type and type of account, along with a specific description of acceptable forms of identification and methods of verification appropriate for each bank's size and location.

While commenters representing various segments of the industry differed on the approach that should be taken in the final rule, the vast majority concluded that Treasury and the Agencies had underestimated the compliance burden that would be imposed by certain elements of the proposal. Commenters were especially concerned about the proposed requirements that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed.

Some commenters also suggested that banks be given greater flexibility when dealing with established customers and urged that banks be permitted to rely on identification and verification of customers performed by a third party, including an affiliate. Other commenters asked for additional guidance regarding the lists of known and suspected terrorists and terrorist organizations that must be checked, and regarding what will be deemed adequate notice to customers for purposes of complying with the final rule. Many commenters requested that the final rule contain a delayed implementation date that would provide banks with the time needed to design a customer identification program, obtain board approval, alter existing policies and procedures, forms and software, and train staff.

Several comments were received from companies engaged in the sale of technology or services that could be used to identify and verify customers, retain records, and check lists of known and suspected terrorists and terrorist organizations. Many of these companies recommended that the proposed rule be modified to make clear that use of specific products and services would be permissible. Some of these commenters urged that the rule require banks to authenticate any documents obtained to verify the identity of the customer through the use of automated document authentication technology.

A small number of comments were received from individuals. Some of these individuals criticized the proposed requirement that banks obtain a social security number from persons opening an account as an infringement upon individual liberty and privacy. Some individuals were concerned that this requirement would expose them to an added risk of identity theft. Other individuals supported the proposal and concluded that its verification requirements might diminish instances of identity theft and fraud. A few commenters suggested that the government develop a separate national identification number or require that social security cards bear photographs and or other safeguards.

A variety of commenters applauded the efforts of Treasury and the Federal functional regulators to devise a uniform set of rules that apply to banks, broker-dealers, mutual funds, futures commission merchants, and introducing brokers.[4] They noted that, without uniformity, customers of financial institutions may seek to open accounts with institutions that customers perceive to have less robust customer identification requirements. These commenters also suggested revisions that would enhance the uniformity of the rules.

Treasury and the Agencies have modified the proposed rule in light of the comments received. A discussion of the comments, and the manner in which the proposed rule has been modified, follows in the section-by-section analysis.

In addition, as suggested by a number of commenters, Treasury and the Agencies expect to issue supplementary guidance following issuance of the final rule.

C. Joint Issuance by Treasury and the Agencies

The final rule implementing section 326 is being issued jointly by Treasury, through FinCEN, and by the Agencies. It applies to (1) a ''bank,'' as defined in 31 CFR 103.11(c), that is subject to regulation by one of the Agencies, and (2) to any non-Federally insured credit union, private bank or trust company that does not have a Federal functional regulator (collectively referred to in the final rule as ''a bank'').

[2] In the preamble for this proposed rule, Treasury explained that a single final regulation would be issued for all financial institutions defined as ''banks'' under 31 CFR 103.11(c), with modifications to accommodate certain differences between Federally regulated and non-Federally regulated banks. *See* 67 FR 48299, 48300.

[3] At the same time, Treasury also published (1) together with the SEC, proposed rules for broker-dealers (67 FR 48306) and mutual funds (67 FR 48318); and (2) together with the CFTC, proposed rules for futures commission merchants and introducing brokers (67 FR 48328).

[4] *See* footnote 3, *supra.*

The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR part 103. In addition, each of the Agencies is concurrently publishing a provision in its own regulations [5] to cross-reference this final rule in order to clarify the applicability of the final rule to the banks subject to its jurisdiction.

Regulations governing the applicability of section 326 to certain financial institutions that are regulated by the SEC and the CFTC are the subject of separate rulemakings. Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all joint rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury, under its own authority, is issuing conforming amendments to 31 CFR 103.34, which imposes requirements concerning the identification of bank customers.

D. Compliance Date

Nearly all commenters on the proposed rule requested that banks be given adequate time to develop and implement the requirements of any final rule implementing section 326 of the Act. These commenters stated that if the proposed rule were implemented, banks would be required, among other things, to revise existing account opening policies and procedures, obtain board approval, train staff, update forms, purchase new or updated software for customer verification and checking of government lists, and purchase new equipment for copying or scanning and storing records. Commenters requested a delayed effective or compliance date, but, given the variety of banks that would be covered by the final rule, there was no consensus regarding the amount of time that would be necessary to comply with the final rule. The transition periods suggested by commenters ranged from 60 days to two years from the date a final rule is published.

The final rule modifies various aspects of the proposal and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the Agencies recognize that some banks will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training of staff, reprinting forms, and developing new software. Accordingly, although this final rule will be effective 30 days after publication, banks are provided with a transition period to implement the rule. Treasury and the Agencies have determined that each bank must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis of Final Rule Implementing Section 326

Section 103.121(a) Definitions

Section 103.121(a)(1) Account. The proposed rule defined ''account'' as each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions and stated that a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an ''account.'' [6] The proposal also explained that the term ''account'' was limited to formal banking and business relationships established to provide ''ongoing'' services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Treasury and the Agencies received a large number of comments on this proposed definition. Some commenters agreed with the proposed definition though others thought the definition of ''account'' was either too broad or needed clarification. Some commenters suggested that the definition of ''account'' be narrowed to include only those relationships that are financial in nature. A number of commenters urged that the definition be limited to high-risk relationships that experts have identified as actually used by money launderers and terrorists. Some of these commenters suggested that particular types of accounts, especially those established as part of employee benefit plans, be excluded from the definition of ''account.''

Most commenters requested that the final rule provide additional examples of the relationships that would constitute an ''account.'' Many commenters requested that the rule clarify the meaning of ''ongoing services.'' These commenters asked whether a person who repeatedly and regularly purchased a money order, requested a wire transfer, or cashed a check on a weekly basis, without any other relationship with a bank, would be considered to have an ''account.'' Many other commenters asked that the exclusion for transfers of accounts between banks described in the preamble for the proposal—which commenters characterized as the ''transfer exception'' —be stated expressly in the regulation and expanded to cover all loans originated by a third party and purchased by a bank, such as mortgages purchased from non-bank lenders and vehicle loans purchased from car dealers.

The final rule contains a number of changes prompted by these comments. First, the reference to the term ''business relationship'' has been deleted from the definition of ''account.'' This change is made to clarify that the regulation applies to the bank's provision of financial products and services, as opposed to general ''business'' dealings, such as those in connection with the bank's own operations or premises. Second, the definition now contains additional, but non-exclusive, examples of products and services, such as safety deposit box and other safekeeping services, cash management, and custodian and trust services, that constitute an ''account.''

The definition of ''account'' also has been changed to include a list of products and services that will not be deemed an ''account.'' The preamble for the proposed rule had used the term ''ongoing services'' to define accounts covered by the final rule, and had referred to the exclusion of ''occasional'' transactions and ''infrequent'' purchases (which arguably would require a bank to monitor all transactions for repetitive contacts). By contrast, the final rule clarifies that ''account'' excludes products and services where a *formal banking relationship* is not established with a person, such as check cashing, wire transfer, or the sale of a check or money order.[7] Treasury and the

[5] 12 CFR 21.21 (OCC); 12 CFR 208.63, 211.5, and 211.24 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA).

[6] The definition of ''account'' in the proposed rule was based on the statutory definition of ''account'' that is used in section 311 of the Act.

[7] This exclusion is consistent with legislative history indicating that by referencing the term ''customers,'' Congress intended ''that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the Federal functional regulators defined ''customers'' and ''customer relationship'' for purposes of the financial privacy rules.'' H.R. Rep. No. 107–250, pt. 1, at 62 (2001). The definitions of ''customer'' and ''customer

Agencies note that part 103 already requires verification of identity in connection with many of these products and services. *See, e.g.,* 31 CFR 103.29 (purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks for $3000 or more); 31 CFR 103.33 (funds transfers of $3000 or more).

In addition, the final rule codifies and clarifies the ''transfer exception.'' Under the final rule, the definition of ''account'' excludes accounts that a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party.[8] Treasury and the Agencies note that the Act provides that the regulations shall require reasonable procedures for ''verifying the identity of *any person seeking to open an account.*'' Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.[9]

Treasury and the Agencies generally agree with the view expressed by commenters who suggested that a bank's limited resources be focused on relationships that pose a higher risk of money laundering and terrorism. Accordingly, the Agencies have included an exception to the definition of ''account'' for accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations which impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements.

Section 103.121(a)(2) Bank. The proposal jointly issued by Treasury and the Agencies applied to any financial institution defined as a ''bank'' in 31 CFR 103.11(c) and subject to regulation by one of the Agencies, including banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks. The proposed definition also included ''any foreign branch of an insured bank'' to make clear that the procedures required by the rule would have to be implemented throughout the bank, no matter where its offices are located. The preamble for the proposal explained that the rule would apply to bank subsidiaries to the same extent as existing regulations requiring banks to have BSA compliance programs.[10] As described above, a second proposal issued simultaneously by Treasury applied to certain other financial institutions defined as a ''bank'' in 31 CFR 103.11(c), namely, those credit unions, private banks, and trust companies that do not have a Federal functional regulator.

Under the final rule, ''bank'' includes all financial institutions covered by both of the proposals described above, except that ''bank'' does not include any foreign branch of an insured U.S. bank. Several commenters explained that the proposal to cover foreign branches might conflict with local laws applicable to branches of insured banks operating outside of the United States and might place U.S. institutions at a competitive disadvantage. Consistent with the approach taken with respect to final regulations implementing other sections of the Act,[11] Treasury and the Agencies have determined that foreign branches of insured U.S. banks are not covered by the final rule. Nevertheless, Treasury and the Agencies encourage each bank to implement an effective CIP, as required by this final rule, throughout its organization, including in its foreign branches, except to the extent that the requirements of the rule would conflict with local law.

As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule.

Section 103.121(a)(3) Customer. The proposal defined ''customer'' to mean any person[12] seeking to open a new account. In addition, the proposal defined a ''customer'' to include any signatory on an account. The preamble for the proposal explained that the term ''customer'' included a person that applied to open an account, but not someone seeking information about an account, such as rates charged or interest paid on an account, if the person did not apply to open an account. The preamble also stated that any person seeking to open an account at a bank, on or after the effective date of the final rule, would be a ''customer,'' regardless of whether that person already had an account at the bank.

This proposed definition prompted a large number of comments. First, nearly all commenters recommended that the Agencies clarify in the text of the final rule that ''customer'' does not include a person who does not receive banking services, such as a person whose deposit or loan application is denied. Some of these commenters suggested that the rule for banks define ''customer'' to mean ''a person who opens a new account,'' as did the proposed rules for broker-dealers, mutual funds, futures commission merchants and introducing brokers.

relationship'' in the financial privacy rules apply only to a consumer who has a ''continuing relationship'' with a bank, for example, in the form of a deposit or investment account, or a loan. *See* .3(h) and (i) of 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); and 12 CFR part 716 (NCUA).

[8] In many cases, these third parties are themselves ''financial institutions'' for purposes of the BSA. Treasury anticipates that these third parties ultimately will be subject to their own customer identification rules implementing section 326 of the Act in the event that they are not presently covered by such a rule.

[9] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a bank, as part of the customer due diligence procedures required under existing regulations requiring banks to have compliance programs implementing the BSA (BSA compliance programs), to verify the identity of customers associated with accounts that it acquires from another financial institution. Treasury and the Agencies expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

[10] All insured depository institutions currently must have a BSA compliance program. *See* 12 CFR 21.21 (OCC); 12 CFR 208.63 (Board); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by section 352 of the Act, 31 U.S.C. 5318(h), to develop and implement an anti-money laundering program. Treasury issued a regulation implementing section 352 providing that a financial institution regulated by a Federal functional regulator is deemed to satisfy the requirements of section 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator, *i.e.,* the requirement to implement a BSA compliance program. *See* 31 CFR 103.120(b); 67 FR 2113 (April 29, 2002). However, Treasury temporarily deferred subjecting certain non-Federally regulated banks to the anti-money laundering program requirements in section 352. *See* 67 FR 67547 (November 6, 2002) (corrected 67 FR 68935 (November 14, 2002)).

[11] *See, e.g.,* 67 FR 60562, 60565 (Sept. 26, 2002) (FinCEN's regulation titled ''Anti-Money Laundering Requirements ''Correspondent Accounts for Foreign Shell Banks: Recordkeeping and Termination of Correspondent Accounts for Foreign Banks' implementing sections 313 and 319(b) of the Act).

[12] The proposed rule defined ''person'' by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities. Treasury and the Agencies agree that it is not necessary to repeat this definition. Therefore, it is omitted from the final rule.

Treasury and the Agencies agree with the view expressed by some commenters that the statute should be construed to ensure that banks design procedures to determine the identity of only those persons who open accounts. Accordingly, the final rule defines a ''customer'' as ''a person that opens a new account.'' [13] For example, in the case of a trust account, the ''customer'' would be the trust. For purposes of this rule, a bank will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named accountholder.[14] In the case of brokered deposits, the ''customer'' will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder.

Many commenters requested that the final rule clarify whether ''customer'' includes a minor child or an informal group with a common interest, such as a club account, where there is no legal entity. The final rule addresses these comments by providing that ''customer'' means ''an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club.''

A few banks stated that defining ''customer'' to include a signatory was consistent with their current practice of verifying the identity of the named accountholder and any signatory on the account. However, most commenters strenuously objected to the inclusion of a signatory as a customer whose identity must be verified, and asserted that this proposed requirement would deviate significantly from their current business practices. These commenters stated that requiring banks to verify signatories on an account would be enormously burdensome to the financial institutions and signatories themselves—many of whom simply work as employees for firms with corporate accounts—and would outweigh any benefit.[15] One commenter asserted that inclusion of signatories as customers went beyond the scope of section 326 of the Act. Although some commenters advocated that any requirement regarding a signatory should be omitted altogether, these commenters generally advocated a risk-based approach that would give banks the discretion to determine when a signatory's identity should be verified.

Credit card banks, in particular, were critical of the signatory requirement because the proposed provision, as drafted, encompassed all authorized users of credit cards. These banks characterized the signatory requirement as unnecessary in the case of credit card companies, which, they explained, already use sophisticated fraud filters to detect fraud and abnormal use. These banks also noted that a person need not be a signatory to use another person's credit card, especially when purchasing products by telephone or over the Internet. Therefore, the signatory requirement would not necessarily ensure that banks would be able to verify the identity of those using a credit card account.

After revisiting the issue of whether a signatory should be a ''customer,'' Treasury and the Agencies have determined that requiring a bank to expend its limited resources on verifying the identity of all signatories on accounts could interfere with the bank's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the proposed provision defining ''customer'' to include a signatory on an account is deleted. Instead, the final rule, at § 103.121(b)(2)(ii)(C), requires a bank's CIP to address situations when the bank will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity.

In addition to defining who is a ''customer,'' the final rule contains a list of entities that will not be deemed ''customers.'' Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of ''customer'' the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)–(iv).[16] Section 103.22(d)(2)(iv) exempts such companies only to the extent of their domestic operations. Accordingly, a bank's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

A great many commenters also objected to the requirement in § 103.121(b)(2)(ii) of the proposed rule that a bank verify the identity of an existing customer seeking to open a new account unless the bank previously verified the customer's identity in accordance with procedures consistent with the proposed rule and continues to have a reasonable belief that it knows the true identity of the customer. These commenters asserted that such a requirement would be burdensome for the bank and would upset existing customers. Some commenters recommended that the rule apply prospectively to new customers who previously had no account with the bank. Many commenters suggested that the final rule contain a risk-based approach where verification would not be required for an existing customer who opens a new account if the bank has a reasonable belief that it knows the identity of the customer, regardless of the procedures the bank followed to form this belief.

[13] Therefore, each person named on a joint account is a ''customer'' under this final rule unless otherwise provided.

[14] However, based on a bank's risk assessment of a new account opened by a customer that is not an individual, a bank may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C), or may need to look through the account in connection with the customer due diligence procedures required under other provisions of its BSA compliance program.

[15] Commenters contended that banks and individuals would confront numerous practical problems. Some commenters noted, for example, that the identification and verification of signatories could be burdensome for banks because business accounts might have many signatories and those signatories would change over time. Some commenters explained that collecting detailed information about an employee who is a signatory would raise privacy concerns for those employees who would be required to disclose personal information to their employer's financial institutions. Other commenters stated that a signatory rarely is present at the time of account opening and, consequently, a bank would encounter substantial obstacles when attempting to verify the signatory's identity using any of the most common methods described in the proposal, including by examining documents or by obtaining a credit report. (Under the Fair Credit Reporting Act (FCRA), a consumer reporting agency generally may furnish a consumer report in connection with transactions involving the consumer and no other. *See* 15 U.S.C. 1681b. Thus, for example, a bank would be prohibited from obtaining a credit report to verify the identity of an authorized user of a customer's credit card.)

[16] Treasury previously determined that banks should be exempted from having to file reports of transactions in currency in connection with these entities. *See* 31 CFR 103.22(d)(1).

Treasury and the Agencies acknowledge that the proposed rule might have had unintended consequences for bank-customer relationships and that the risk-based approach suggested by commenters would avoid these consequences. Accordingly, the final rule excludes from the definition of ''customer'' a person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[17]

Section 103.121(a)(4) Federal functional regulator. The proposed rule defined ''Federal functional regulator'' by reference to § 103.120(a)(2), meaning each of the Agencies, the SEC, and the CFTC. There were no comments on this definition, and Treasury and the Agencies have adopted it as proposed.

Section 103.121(a)(5) Financial institution. The final rule includes a new definition for the term ''financial institution'' that cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of ''financial institution'' than that in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

Section 103.121(a)(6) Taxpayer identification number. The proposed rule repeated the language from § 103.34(a)(4), which states that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes ''a taxpayer identification number.'' There were no comments on this approach, and Treasury and the Agencies have adopted it substantially as proposed, with minor technical modifications.

Section 103.121(a)(7) and (8) U.S. Person and non-U.S. person. The proposed rule provided that ''U.S. person'' is an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States. A ''non-U.S. person'' was defined as a person who did not satisfy either of these criteria.

As described in greater detail below, a bank is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the bank may obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Several commenters suggested that it would be less confusing to bankers if ''U.S. person'' meant both a U.S. citizen and a resident alien, consistent with the definition of this term used in the Internal Revenue Code (IRS definition).[18] A few commenters criticized the proposed definition because it would require banks to establish whether a customer is or is not a U.S. citizen.

Treasury and the Agencies believe that the proposed definition of ''U.S. person'' is a better standard for purposes of this final rule than the IRS definition. Adoption of the IRS definition of ''U.S. person'' would require bank staff to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a bank will not necessarily need to establish whether a potential customer is a U.S. citizen. The bank will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the bank may then accept alternative forms of identification. For these reasons, the definition is adopted as proposed.

Section 103.121(b) Customer Identification Program: Minimum Requirements

Section 103.121(b)(1) General Rule. The proposed rule required each bank to implement a CIP that is appropriate given the bank's size, location, and type of business. The proposed rule required a bank's CIP to contain the statutorily prescribed procedures, described these procedures, and detailed certain minimum elements that each of the procedures must contain. In addition, the proposed rule required that the CIP be written and that it be approved by the bank's board of directors or a committee of the board.

The proposed rule also stated that the CIP must be incorporated into the bank's BSA[19] compliance program and should not be a separate program. A bank's BSA compliance program must be written, approved by the board, and noted in the bank's minutes. It must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. The preamble for the proposal explained that the CIP should be incorporated into each of these four elements of a bank's BSA program.

Most commenters agreed with the proposal's approach of allowing banks to develop risk-based programs tailored to their specific operation, though some of these commenters recommended that Treasury and the Agencies adopt an entirely risk-based approach without any minimum requirements while others recommended a more prescriptive approach. Many commenters suggested that Treasury and the Agencies clarify the extent to which a bank could rely on a third party, especially an affiliate, to perform some or all aspects of its CIP.

Other commenters focused on the requirement that a bank's board of directors approve the CIP. These commenters urged Treasury and the Agencies to adopt a regulation that states that the role of a bank's board of directors need only be to approve broad policy rather than the specific methods or actual procedures that will be a part of a bank's CIP. One commenter recommended that the governing body of a financial institution be permitted to delegate its responsibility to approve the CIP.

The final rule attempts to strike an appropriate balance between flexibility and detailed guidance by allowing a bank broad latitude to design and implement a CIP that is tailored to its particular business practices while providing a framework of minimum standards for identifying each customer, as the Act mandates. Following the description of the procedures and minimum requirements for each element of a bank's CIP (identity verification, recordkeeping, comparison with government lists, and customer notice), the final rule contains a new section describing the extent to which a bank may rely on a third party to perform these elements, described in detail below.

The final rule removes the requirement that the bank's board of directors or a committee of the board must approve the bank's CIP because this requirement is redundant. A bank's BSA compliance program must already be approved by the board. Treasury and the Agencies regard the addition of a CIP to the bank's BSA compliance program to be a material change in the BSA compliance program that will require board approval. The board of director's responsibility to oversee bank compliance with section 326 of the Act

[17] As a foreign branch of an insured U.S. bank is no longer a ''bank'' for purposes of this rule, a customer of a bank's foreign branch will no longer be ''a person who has an existing account with the bank.'' Therefore, the bank must verify the identity of a customer of its foreign branch in accordance with its CIP if such a customer opens a new account in the U.S.

[18] 26 U.S.C. 7701(a)(30)(A).

[19] *See* footnote 10, supra.

is a part of a board's conventional supervisory BSA compliance responsibilities that cannot be delegated to bank management. Therefore, a bank's board of directors must be responsible for approving a CIP described in detail sufficient for the board to determine that (1) the bank's CIP contains the minimum requirements of this final rule; and (2) the bank's identity verification procedures are designed to enable the bank to form a reasonable belief that it knows the true identity of the customer. Nevertheless, responsibility for the development, implementation, and day-to-day administration of the CIP may be delegated to bank management.

The final rule will apply to some non-Federally regulated banks that are not yet subject to an anti-money laundering compliance program requirement.[20] Therefore, the final rule only requires that the CIP be a part of a bank's anti-money laundering program once a bank becomes subject to an anti-money laundering compliance program requirement.[21]

Section 103.121(b)(2) Identity Verification Procedures. The proposed rule provided that each bank must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the bank's assessment of certain risks. The proposed rule stated that these procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Some commenters recommended that the identity verification requirement be waived for new customers that are well known to a senior officer of the bank. Some of these commenters endorsed such a waiver provided that a bank employee could provide ''an affidavit of identity'' on behalf of the customer.

One commenter criticized the standard requiring a bank to have identity verification procedures ''that enable the bank to form a reasonable belief that it knows the true identity of the customer'' as too subjective. This commenter suggested that a better standard would be lack of affirmative notice of deficiency in the identity process. Another commenter suggested that the rule make clear that a bank is only required to verify a customer's identity, to the extent reasonable and practical, in order to establish that it has a reasonable basis for knowing the true identity of its customer.

The final rule provides that a bank's CIP must include risk-based procedures for verifying the identity of each customer[22] to the extent reasonable and practicable. The final rule also states that the procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer. As section 326 of the Act states, a bank's affirmative obligation to verify the identity of its customer applies to ''any person'' rather than only to a person whose identity is suspect, as suggested by one commenter. Furthermore, Treasury and the Agencies have determined that the statutory obligation to ''*verify* the identity of any person'' requires the bank to implement and follow procedures that allow the bank to have a reasonable belief that it knows the true identity of the customer.

Given the flexibility built into the final rule, Treasury and the Agencies believe that it is not appropriate to provide special treatment for new customers known to bank personnel. In addition, permitting reliance on bank personnel to attest to the identity of a customer may be subject to manipulation. Accordingly, the final rule does not establish different rules for customers who are known to bank personnel.

The final rule requires the identity verification procedures to be based upon relevant risks, including those presented by the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the types of identifying information available. In addition to these risk factors, which are specifically identified in section 326, the final rule states that the procedures should take into account the bank's size, location, and type of business or customer base, additional factors mentioned in the Act's legislative history.[23]

Section 103.121(b)(2)(i) Customer Information Required. The proposed rule required that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. It stated that, at a minimum, a bank must obtain from each customer the following information prior to opening an account: (1) Name; (2) address (a residential and mailing address for individuals, and principal place of business and mailing address for a person other than an individual); (3) date of birth for individuals; and (4) an identification number.

Treasury and the Agencies received a variety of comments criticizing the requirement that a bank obtain certain minimum identifying information prior to opening an account. Some commenters, including a trade association representing large financial institutions, recommended that a bank be permitted to open an account for a customer who lacks some of the minimum identifying information, provided that the bank has formed a reasonable belief that it knows the true identity of the customer. Credit card banks explained that the minimum information requirement would create problems for retailers that offer credit cards at the point of sale. These commenters stated that retailers were not likely to have the means to record identifying information other than what is currently collected. They suggested that when there are systems in place to identify customers and detect suspicious transactions, the rule should require only the collection of information that the credit card bank or card issuer deems necessary and appropriate to identify the customer.

Other commenters stated that the rule should not require a bank to obtain the minimum identifying information prior to account opening in every instance. Some of these commenters suggested that a bank be permitted to obtain the required information within a reasonable time after the account is opened. Some commenters suggested that the rule permit banks to obtain identifying information from a party other than the customer. This would arise, for example, when a bank offers a credit card based on information obtained from a credit reporting agency. Other commenters suggested that a bank also be required to obtain information about a customer's occupation, profession or business, as this information is needed by a bank that intends to file a report of transactions in currency or a suspicious activities report on the customer.

Consistent with the proposal, the final rule provides that a bank's CIP must contain procedures that specify the identifying information that the bank must obtain from each customer prior to opening an account. In addition, the rule specifies the four basic categories of information that a bank must obtain from the customer prior to opening an account. Treasury and the Agencies believe that requiring banks to gather these standard forms of information prior to opening an account is not overly burdensome because such identifying information is routinely

[20] *See* footnote 10, *supra.*

[21] The final rule therefore provides that until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

[22] Other elements of the bank's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

[23] H.R. Rep. No. 107–250, pt. 1, at 62 and 63 (2001).

gathered by most banks in the account opening process and is required by other sections of 31 CFR part 103. Of course, based upon an assessment of the risks described above, a bank may require a customer to provide additional information to establish the customer's identity.

Treasury and the Agencies acknowledge that imposing this requirement on banks that offer credit card accounts is likely to alter the manner in which they do business by requiring them to gather additional information beyond that which they currently obtain directly from a customer who opens an account at the point of sale or by telephone. Treasury and the Agencies are mindful of the legislative history of section 326, which indicates that Congress expected the regulations implementing this section to be appropriately tailored for accounts opened in situations where the account holder is not physically present at the financial institution and that the regulations should not impose requirements that are burdensome, prohibitively expensive, or impractical.[24]

Therefore, Treasury and the Agencies have included an exception in the final rule for credit card accounts only, which would allow a bank broader latitude to obtain some information from the customer opening a credit card account, and the remaining information from a third party source, such as a credit reporting agency, prior to extending credit to a customer. Treasury and the Agencies recognize that these practices have produced an efficient and effective means of extending credit with little risk that the lender does not know the identity of the borrower.

Treasury and the Agencies also received comments on the advisability of requiring banks to collect the specific identifying information (name, date of birth, address, and identification number), as would have been required under the proposed rule. With respect to obtaining the customer's name, one commenter recommended that based on Texas law and banks' experience, a bank should be required to obtain the name under which the customer is doing business and the customer's legal name. The final rule continues to require that the bank obtain the customer's name, meaning a legal name that can be verified. As noted above, this is a minimum requirement, and a bank may also need to obtain the name under which a person does business in order to establish a reasonable belief it knows the true identity of the customer.

One trade association suggested that banks be permitted to make a risk-based determination before requiring a customer to provide date of birth because many customers would prefer not to share this information. One commenter stated that date of birth is not an important identifying characteristic and should be deleted. Another commenter stated that credit card issuers do not request this information because it can raise fair lending issues. Finally, a few commenters noted that standardized mortgage applications require age rather than date of birth and would have to be altered.

The final rule provides that a bank must obtain the date of birth for a customer who is an individual. Treasury and the Agencies believe that date of birth is an important identifying characteristic and can be used to provide a bank or law enforcement with an additional means to distinguish between customers with identical names. However, the required collection and retention of information about a customer's date of birth does not relieve the bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of age or other prohibited classification. Banks collecting date of birth from individual customers should be able to take reasonable measures to convert this information into age for purposes of the forms used in the secondary mortgage market given the delayed compliance date for the final rule.

Many commenters criticized the requirement that a bank obtain both the customer's physical and mailing address, if different. Most commenters urged Treasury and the Agencies to eliminate the requirement that the customer provide a physical address. Some of these commenters stated that this requirement could interfere with the ability of certain segments of the population to obtain a bank account, such as members of the military, persons who reside in mobile homes with no fixed address, and truck drivers who do not have a physical address. Banks that offer credit card accounts and card issuers stated that the address requirement would be extremely burdensome because they would have to change the manner in which they do business, and in some cases, credit card banks currently do not have the capacity to collect both addresses. Some of these commenters stated that new credit card customers are reluctant to give more than one address and, therefore, it would be difficult to obtain this information from customers. A trade association representing credit card banks asserted that customers may have a legitimate reason for handling correspondence through post office boxes and should not have to provide a physical address. This commenter asserted that requiring the customer to provide a physical address will discourage the provision of financial services to the unbanked and will prevent a victim of identity theft from using an alternative to an unsecured home mailbox. Another commenter noted that the physical address of a customer's principal place of business may not be relevant if the bank is working with a customer's local office. This commenter recommended that the rule simply permit the bank to obtain the customer's street address. Credit card banks and issuers urged Treasury and the Agencies to make the requirement that a bank obtain the customer's physical address optional.

Section 326 of the Act requires Treasury and the Agencies to prescribe regulations that require financial institutions to implement ''reasonable procedures.'' Accordingly, under the final rule, a bank will not be required to obtain more than a single address for a customer. Nonetheless, Treasury and the Agencies believe that the identification, verification, and recordkeeping provisions of the Act, taken together, should provide appropriate resources for law enforcement agencies to investigate money laundering and terrorist financing. The final rule therefore provides that a bank generally must obtain a residential or business street address for a customer who is an individual because Treasury and the Agencies have determined that law enforcement agencies should be able to contact an individual customer at a physical location, rather than solely through a mailing address. Treasury and the Agencies recognize that this provision may be impracticable for members of the military who cannot readily provide a physical address, and other individuals who do not have a physical address but who reliably can be contacted. Accordingly, the final rule provides an exception under these circumstances that allows a bank to obtain an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or of another contact individual. For a customer other than an individual, such as a corporation, partnership, or trust, the bank may obtain the address of the principal place of business, local office,

[24] H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

or other physical location of the customer. Of course, a bank is free to obtain additional addresses from the customer, such as the customer's mailing address, to meet its own or its customer's business needs.

The proposal required that banks obtain an identification number from customers. For U.S. persons, a bank would have been required to obtain a U.S. taxpayer identification number. For non-U.S. persons, a bank would have been required to obtain a number from various alternative forms of government-issued identification.

One commenter stated that this requirement would not be burdensome. Commenters representing certain consumer advocacy groups commended Treasury and the Agencies for providing banks with the discretion to accept alternative forms of identifying information from non-U.S. citizens. These commenters stated that this position would assist low-income immigrants in gaining financial stability. By contrast, some commenters stated that the final rule should not permit a bank to open an account for a customer using only a foreign identification number when the customer provides a U.S. address. Other commenters asked for guidance on whether a bank is permitted to accept a number from the identification document issued by a foreign government. A few commenters urged the government to require a national identification document for all individuals.

Other commenters, primarily credit card banks, stated that the requirement that a bank obtain a U.S. taxpayer identification number from U.S. persons would create considerable hardship. They stated that new credit card customers are reluctant to give out their social security numbers, especially over the telephone. They urged that banks be given the discretion to collect identifying information, other than social security numbers, when appropriate in light of consumer privacy and security concerns. In the alternative, they recommended that banks be permitted to obtain a U.S. taxpayer identification number for U.S. persons from a trusted third party source, such as a credit reporting agency.

Some commenters questioned what number to use for accounts opened in the name of a bowling league or class reunion, or to accept donations for a special cause. Other commenters questioned what number could be obtained from foreign businesses and enterprises that have no taxpayer identification number or other government-issued documentation.

The final rule provides that a bank must obtain an ''identification number'' from every customer. As discussed above, under the definition of ''customer,'' the final rule permits a bank to obtain the identification number of the individual who opens an account in the name of an individual who lacks legal capacity, such as a minor, or a civic group, such as a bowling league.

After reviewing the comments, Treasury and the Agencies have determined that requiring a bank to obtain a customer's identification number, such as a social security number, from the customer himself or herself, in every case, including over the telephone, would be unreasonable and impracticable because it would be contrary to banks' current practices and could alienate many potential customers. Accordingly, Treasury and the Agencies have adopted an exception for credit card accounts that will permit a bank offering such accounts to acquire information about the customer, including an identification number, from a trusted third party source prior to extending credit to the customer, rather than having to obtain this information directly from the customer prior to opening an account.

The final rule also provides that for a non-U.S. person, a bank must obtain one or more of the following: A taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number); passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This standard provides a bank with some flexibility to choose among a variety of identification numbers that it may accept from a non-U.S. person.[25] However, the identifying information the bank accepts must permit the bank to establish a reasonable belief that it knows the true identity of the customer.

Treasury and the Agencies emphasize that the final rule neither endorses nor prohibits bank acceptance of information from particular types of identification documents issued by foreign governments. A bank must decide for itself, based upon appropriate risk factors, including those discussed above (the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the other types of identifying information available, and the bank's size, location, and customer base), whether the information presented by a customer is reliable.

Treasury and the Agencies recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore, the final rule notes that when opening an account for such a customer, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

The proposal also contained a limited exception to the requirement that a bank obtain a taxpayer identification number from a customer opening a new account. The exception permitted a bank to open an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number (EIN), provided that the bank obtains a copy of the application before it opens the account and obtains the EIN within a reasonable period of time after the account is established. The preamble for the proposed rule explained that this exception was included for a new business that might need access to banking services, particularly a bank account or an extension of credit, before it has received an EIN from the Internal Revenue Service.

Some commenters questioned this limited exception for certain businesses. A few commenters suggested expanding the exception to include individuals who have applied for, but have not yet received a taxpayer identification number. Another commenter stated that the exception provided no added benefit and would add to a bank's recordkeeping and monitoring burden.

Treasury and the Agencies have determined that a bank should be afforded more flexibility in situations where a person, including an individual, has applied for, but has not yet received, a taxpayer identification number. Therefore, the final rule states that instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer (including an individual) that has applied for, but has not received, a taxpayer identification

[25] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a bank. *See* Treasury Department, ''A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act,'' October 21, 2002.

number.[26] To lessen the recordkeeping burden for a bank that elects to use this exception, the final rule also provides that the bank's CIP need only include procedures requiring the bank to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened. Thus, a bank will be able to exercise its discretion [27] to determine how to confirm that a customer has filed an application for a taxpayer identification number rather than having to keep a copy of the application on file.

Section 103.121(b)(2)(ii) Customer Verification. The proposed rule provided that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened.[28] The proposed rule also described when a bank is required to verify the identity of existing customers.

Several commenters asked Treasury and the Agencies to underscore that these verification procedures may be risk-based by noting that a bank may verify less than all of the identifying information provided by the customer. Many commenters noted that there is currently no reliable, efficient, or effective means of verifying a customer's social security number. Some of these commenters asked the government to establish a method that would permit banks to establish the authenticity and accuracy of a customer's name and taxpayer identification number.

Treasury and the Agencies recognize that there currently is no method that would permit a bank to verify, for example, a taxpayer identification, passport or alien identification number through an official source. Accordingly, the final rule provides that a bank's CIP must contain procedures for verifying the *identity* of the customer, ''using the information obtained in accordance with paragraph (b)(2)(i),'' namely, the identifying information obtained by the bank. Thus, a bank need not establish the accuracy of every element of identifying information obtained but must do so for enough information to form a reasonable belief it knows the true identity of the customer.

Some commenters stated that they appreciated the flexibility of the proposal permitting an institution to determine how soon identity must be verified. Other commenters asked Treasury and the Agencies to clarify what is a ''reasonable period of time.'' As stated in the preamble for the proposal, Treasury and the Agencies believe that the amount of time it will take an institution to verify a customer's identity may depend upon various factors, such as the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. For the same reasons, the final rule provides banks with the flexibility necessary to accommodate a wide range of situations by stating that the bank must verify the identifying information within a reasonable time after the account is opened.[29]

As discussed above in the definition section, many commenters criticized the proposed approach regarding verification of existing customers that open new accounts. The final rule addresses these concerns by modifying the definition of ''customer'' to exclude a person who has an existing account with the bank if the bank has a reasonable belief that it knows the true identity of the person.

Many commenters urged that the final rule continue to allow, but not mandate, documentary verification. A few commenters requested that the final rule provide additional guidance on verification. Some commenters asked that the final rule clarify that a bank may choose to use only documentary methods and may refuse to open an account using other methods.

The final rule addresses these comments by stating that a bank's CIP's verification procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods to verify a customer's identity.

Section 103.121(b)(2)(ii)(A) Verification Through Documents. The proposed rule provided that the CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. It then gave examples of documents that could be used to verify the identity of individuals and other persons such as corporations, partnerships, and trusts.

Most commenters noted that banks do not have the means to authenticate or validate documents provided by their customers and urged Treasury and the Agencies to clarify that document authentication is not a CIP requirement. Treasury and the Agencies wish to confirm that once a bank has obtained and verified the identity of the customer through a document such as a driver's license or passport, the bank will not be required to take steps to determine whether the document has been validly issued. A bank generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the bank must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Some commenters also asked that Treasury and the Agencies provide more examples and discuss appropriate types of documentary identification in the final rule or in separate guidance that banks may easily access. Commenters asked whether a utility bill, or library card addressed to the same physical address and name of the person seeking the account, or a foreign identification card, such as a foreign voter registration card or driver's license, would be acceptable. Some commenters questioned whether copies of documents would suffice.

Given the recent increases in identity theft and the availability of fraudulent documents, Treasury and the Agencies agree with a commenter who suggested that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, a bank is encouraged to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, banks are encouraged to use a variety of methods to verify the identity of a customer, especially when the bank does not have the ability to examine original documents.

The final rule attempts to strike the appropriate balance between the

[26] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning ''awaiting-TIN [taxpayer identification number] certificates.'' The IRS permits a taxpayer to furnish an ''awaiting-TIN certificate'' in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.*, interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)–3.

[27] For example, the bank may wish to examine a copy of the application filed.

[28] The preamble for the proposed rule noted that, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provided the bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.

[29] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control (OFAC) prohibiting transactions involving designated foreign countries or their nationals).

benefits of requiring additional documentary verification and the burdens that may arise from such a requirement by providing that a bank's CIP must state the documents that a bank will use. This will require each bank to conduct its own risk-based analysis of the types of documents it believes will enable it to know the true identity of its customers.

The final rule continues to provide an illustrative list of identification documents. For an individual, these may include an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. For a person other than an individual, these may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Some commenters questioned whether the examples of identification documents given for persons other than individuals would be reliable. One commenter questioned whether trust documents alone would be sufficient verification of identity. Another commenter suggested allowing banks to rely on a certification by the trustee, or an appropriate legal opinion, rather than the trust instrument to verify the existence of a trust. Someone else suggested that banks should be allowed to rely on documentation consisting of evidence that a business is either publicly traded or is authorized to do business in a state or the United States.

The examples provided in the final rule were intended only to illustrate the documents a bank might use to verify the identity of a customer that is a corporation, partnership, or trust. A bank may use other documents, provided that they allow the bank to establish that it has a reasonable belief that it knows the true identity of its customer. Accordingly, the final rule makes no significant changes to the examples.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. Recognizing that some accounts are opened by telephone, by mail, and over the Internet, the proposed rule provided that a bank's CIP also must contain procedures describing what non-documentary methods the bank will use to verify identity and when the bank will use these methods (whether in addition to, or instead of, relying on documents). The preamble for the proposed rule also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.

The proposed rule gave examples of non-documentary verification methods that a bank may use, including contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The preamble for the proposed rule stated that a bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).

The proposal required that the procedures address situations where an individual, such as an elderly person, legitimately is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction, for example over the phone, by mail, or through the Internet; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Several commenters asked for additional guidance regarding when non-documentary verification methods should be used in addition to documentary verification methods and the circumstances in which only one or all of the non-documentary verification methods listed are necessary. Commenters also asked for guidance on audit methodology, and an explanation of the due diligence required for verification of accounts opened by telephone, mail, and through the Internet. A few commenters suggested that reference to verification, where a bank compares information provided by the customer with information from trusted third party sources, be expressly mentioned in the final rule.

As the large number of comments on this section illustrates, a rule that attempted to address every scenario and combination of risk-factors that a bank might confront would be extremely complex and invariably would fail to address many situations. Rather than adopt a lengthy and potentially unwieldy rule that still would not address every situation, Treasury and the Agencies have concluded that it would be more effective to adopt general principles that are fleshed out through examples. Therefore, the final rule states that for a bank relying on non-documentary verification methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

The final rule *generally* retains the illustrative list of non-documentary methods contained in the proposal. Treasury and the Agencies have clarified that one method is ''independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source,'' rather than verifying ''documentary information'' through such sources.

The final rule also retains the variety of situations that the procedures must address that were identified in the proposal, with the following two changes. First, because ''transaction'' is a defined term in 31 CFR part 103, instead of using the term ''face-to-face transaction,'' the final rule states that the procedures must address the situation where a customer opens an account without appearing in person at the bank. Second, the final clause of this provision provides that the CIP must include procedures to address situations where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents. This clause acknowledges that there may be circumstances beyond those specifically described in this provision when a bank should use non-documentary verification procedures.

As stated in the preamble for the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the Agencies encourage banks to use non-documentary methods even when the customer has provided identification documents.

Section 103.121(b)(2)(ii)(C) Additional Verification for Certain Customers. As described above, the proposed rule required the identification and verification of each signatory for an account. Most commenters objected to this requirement as overly burdensome, and, upon consideration of the points raised by the commenters, Treasury and the Agencies agree that it is appropriate

to delete it. For the reasons discussed below, however, the rule does require that a bank's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the Agencies believe that while the majority of customers may be verified adequately through the documentary or non-documentary verification methods described in paragraphs (b)(2)(ii)(A) and (B), there may be instances where this is not possible. The risk that the bank will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. Treasury and the Agencies believe that a bank must identify customers that pose a heightened risk of not being properly identified, and a bank's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the entity in whose name such an account is opened when standard documentary and non-documentary methods prove to be insufficient.

For these reasons, the requirement to verify the identity of signatories has been replaced by a new provision in the final rule that requires that a bank's CIP address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank also will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This additional verification method will only apply when the bank cannot adequately verify the customer's identity using the documentary and non-documentary verification methods described in (b)(2)(ii)(A) and (B). Moreover, a bank need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity using standard documentary and non-documentary verification methods.

Section 103.121(b)(2)(iii) Lack of Verification. The proposed rule stated that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. The preamble for the proposed rule listed what these procedures should include. In addition, the proposal stated that a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[30]

The final rule retains the general requirement that a bank's CIP include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of the customer. However, the rule text itself now states that the procedures should describe the following: when a bank should not open an account for a potential customer; the terms under which a customer may use an account while the bank attempts to verify the customer's identity; when the bank should close an account after attempts to verify a customer's identity have failed; and when the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

One commenter stated that requiring a bank to close an account if it cannot verify a customer's identity would conflict with state laws and would subject the bank to legal liability. The commenter urged that if this provision is retained, the final rule also should shield banks from state regulatory and borrower liability in these circumstances. Other commenters asked that Treasury and the Agencies clarify that further investigation that results in failure to open an account will not trigger adverse action requirements under the FCRA, 15 U.S.C. 1681 *et seq.* or the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*

The final rule does not specifically require a bank to close the account of a customer whose identity the bank cannot verify, but instead leaves this determination to the discretion of the bank. Treasury and the Agencies have determined that there is no statutory basis to create a safe harbor that would shield banks from state regulatory or borrower liability if a bank should choose to close a customer's account. Any such closure should be consistent with the bank's existing procedures for closing accounts in accordance with its risk management practices. Treasury and the Agencies also note that a bank must comply with other applicable laws and regulations, such as the adverse action provisions under ECOA and the FCRA, when determining not to open an account because it cannot establish a reasonable belief that it knows the true identity of the customer.[31]

Section 103.121(b)(3) Recordkeeping

Section 103.121(b)(3)(i) Required Records. The proposed rule set forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank would have been required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the proposal would have required the bank to maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain. The bank also would have been required to record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the bank would have been required to record the resolution of any discrepancy in the identifying information obtained.

This section of the proposed rule prompted the most comment. Though one commenter felt that the recordkeeping requirements in the proposed rule were weak, almost all other commenters identified the proposed documentation and record retention requirements as overly burdensome. Commenters urged Treasury and the Agencies to permit a bank to record the information from the documents obtained rather than requiring banks to maintain copies of these documents for the life of the account. Commenters generally argued that it would be difficult and very burdensome to store and retrieve copies of documents used to verify the identity of the customer. In addition, some commenters noted that many kinds of identification documents, particularly some new driver's licenses, have security features that prevent them from being copied legibly. Other commenters stated that copies of documents would be difficult to safeguard and could facilitate identity theft.

Commenters stated that requiring banks to keep copies of documents would substantially deviate from current banking practice and would violate certain states' laws. Banks offering credit card accounts through retailers, who require the customer to

[30] The preamble also explained that there are some exceptions to this basic rule. For example, a bank may maintain an account at the direction of a law enforcement or intelligence agency, even though the bank does not know the true identity of the customer.

[31] *See* 12 CFR 202.9(b) (Federal Reserve Regulation B that prescribes the form of ECOA notice and statement of specific reasons); 15 U.S.C. 1681m (FCRA provision that provides for duties of users taking adverse actions on the basis of information contained in consumer reports from other third parties or affiliates).

provide identifying documents at the point of sale, strenuously opposed this requirement if it were interpreted to cover documents presented to the merchant. These commenters stated that copy machines are not usually available at the point of sale, and that the rule as proposed would require merchants to purchase large numbers of additional copy machines. The commenters also anticipated that consumers would be greatly inconvenienced by this requirement and might have to endure lengthy waits during any busy shopping season. These commenters questioned whether the risks of money-laundering and the financing of terrorism through retail store credit cards, which generally have relatively low credit limits, restrictions on pre-payment, and other features to detect fraud, warrant the imposition of these additional costs.

Other commenters stated that requiring banks to keep copies of documents that have pictures, such as driver's licenses, could expose the bank to allegations of unlawful discrimination, even if the retention of this information were not prohibited under ECOA. Some banks objected to this requirement on the grounds that it directly conflicted with the position that the Agencies have traditionally taken on this issue, including the criticism of banks that have retained such information in their files when extending credit.

Other commenters asked that a bank be permitted to record the processes and procedures generally used for verification rather than being required to keep records of the methods used and the resolution for each and every account, especially where the bank uses standardized procedures for all customers and could demonstrate that these procedures were applied. Some commenters suggested that the final rule permit banks to use a risk-based approach for recordkeeping.

In light of the comments received, Treasury and the Agencies have reconsidered and modified the recordkeeping requirements of the proposed rule. The final rule provides that a bank's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a bank develop and implement a CIP. However, the final rule affords banks significantly more flexibility than did the recordkeeping provisions contained in the proposal. Under the final rule, a bank's records are to include ''a description,'' rather than a copy, of any document upon which the bank relied in order to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date. The final rule also clarifies that the record must include ''a description'' of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any ''substantive'' discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.

As Treasury and the Agencies indicated in the preamble for the proposal, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this final rule, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(3)(ii) Retention of Records

The proposal required a bank to retain all of the records specified in the recordkeeping provision for five years after the date the account is closed.

This requirement prompted strenuous objections. Assuming that copies of the documents used to verify the identity of the customer would have to be retained, commenters asserted that retaining records until five years after the account is closed would be very burdensome. Some commenters noted that imaging is not a routine practice for community banks and could be costly. Banks offering credit card accounts stated that the record retention requirement would require a change in forms, processes, and systems, while also increasing storage costs. As credit cards do not have a specific term, commenters noted that banks would be required to keep these records forever, unless they are culled manually. Some commenters suggested that the retention period be shortened, with suggestions ranging from one to three years after the account is closed, while other commenters suggested that the period be shortened to five years from when the account is opened. Many commenters stated that two years from when the information is obtained would be consistent with other regulatory requirements, such as the record retention requirements for an application for an extension of credit subject to ECOA (12 CFR 202.12(b)).

By eliminating the requirement that a bank retain copies of the documents used to verify the identity of the customer, Treasury and the Agencies believe that the final rule largely addresses the main concern of these commenters. However, Treasury and the Agencies also have determined that, while the identifying information provided by the customer should be retained, there is little value in requiring banks to retain the remaining records for five years after an account is closed because this information is likely to have become stale. Therefore, the final rule now prescribes a bifurcated record retention schedule that is consistent with the general five-year retention requirement in 31 CFR 103.38. First, the bank must retain the information referenced in paragraph (b)(3)(i)(A) (that is, information obtained about a customer), for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. Second, the bank need only retain the records that it must make and maintain under the remaining parts of the recordkeeping provision, paragraphs (b)(3)(i)(B), (C), and (D) (that is, information that verifies a customer's identity) for five years after the record is made.

Section 103.121(b)(4) Comparison with Government Lists. The proposed rule required a bank to have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any Federal government agency. In addition, the proposal stated that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists.

Most commenters were concerned about how a bank would be able to determine what lists should be checked for purposes of this provision and how these lists would be made available. Some commenters asked that the final rule confirm that a bank will not have an affirmative duty to *seek out* all lists compiled by the Federal government and would only be required to check lists *provided* to it by the Federal government. Some commenters noted that lists published by OFAC are published but are not provided to financial institutions.[32] Many commenters urged that all lists within the meaning of section 326 of the Act,

[32] Nevertheless, the legislative history for this provision indicates that the lists Congress intended financial institutions to consult ''are those already supplied to financial institutions by the Office of Foreign Asset Control (OFAC), and occasionally by law enforcement and regulatory authorities, as in the days immediately following the September 11, 2001, attacks on the World Trade Center and the Pentagon.'' H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

be centralized, issued by a single designated government agency, and provided to financial institutions in a commonly used electronic format. Some of these commenters suggested that instead of providing multiple lists, the government set up a single Web site that would permit a bank to search for a name alphabetically, similar to the OFAC list. Other commenters asked Treasury and the Agencies to clarify what action a bank should take when a customer appears on a list.

Commenters also asked for guidance regarding the timing of when the comparison must be performed and asked whether the lists could be checked after an account is opened. Some commenters stated that there is no practical way for a financial institution to check lists prior to opening an account.

The final rule states that a bank's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists banks must check in order to comply with this provision. However, banks will not have an affirmative duty under this regulation to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, banks will receive notification by way of separate guidance regarding the lists that must be consulted for purposes of this provision.

Treasury and the Agencies have modified this provision to give guidance as to *when* a bank must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the bank to make a determination regarding whether a customer appears on a list ''within a reasonable period of time'' after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list.

The final rule provides that a bank's CIP must contain procedures requiring the bank to follow all Federal directives issued in connection with such lists. Again, because there are no lists that have been designated under this provision as yet, the final rule cannot provide more guidance in this area.

Section 103.121(b)(5) Customer Notice. The proposed rule would have required a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. The preamble for the proposal stated that a bank could satisfy that notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. It stated that the bank could post a notice in its lobby or on its Internet website, or provide customers with any other form of written or oral notice.

Treasury and the Agencies received a large number of comments on this provision. Some commenters did not agree that section 326 of the Act requires notice to bank customers. Some of these commenters suggested that a bank's request for identifying information should be considered adequate notice. Other commenters did not question this requirement and stated that they appreciated the flexibility of this provision. However, a great many commenters asked for additional guidance on the content and timing of the notice and specifically requested that the final rule provide model language so that all institutions represent the requirements of section 326 in the same manner and the adequacy of notice is not left to the interpretation of individual examiners.

Section 326 provides that the regulations issued ''shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with reasonable procedures'' that satisfy the statute. Based upon this statutory requirement, the final rule requires a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. However, the final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement.

The final rule states that notice is adequate if the bank generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account. The final rule also states that depending upon the manner in which an account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice. In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a bank's customers when provided in accordance with the requirements of this final rule.

Section 103.121(b)(6) Reliance on Another Financial Institution. Many commenters urged that the final rule permit a bank to rely on a third party to perform elements of the bank's CIP. For example, some commenters asked that the final rule clarify that a bank may use a third party service provider to perform tasks and keep records. Other commenters recommended that the rule should permit a third party to verify the identity of the bank's customer in indirect lending arrangements, for example, where a car dealer acting as agent of the bank extends a loan to a customer or where a mortgage broker acts on a bank's behalf. Some commenters urged that the final rule be modified to more broadly permit financial institutions to share customer identification and verification duties with other financial institutions so as to avoid each institution having to undertake duplicative customer identification efforts. Some of these commenters suggested that a bank be permitted to allocate its responsibility to verify the customer's identity by contract with another financial institution as permitted in the proposed rule for broker-dealers.

Other commenters requested that the final rule permit the CIP obligations to be performed initially by only one financial institution if a customer has different accounts with different affiliates. These commenters noted that it is common for a customer to maintain several different accounts with a financial institution and its affiliates. The same customer, for example, may have a credit card account with one affiliate, a home mortgage with another affiliate, and a brokerage account with a broker-dealer affiliate. The commenters urged that a bank be permitted to rely on customer identification and verification performed by an affiliate because it would be superfluous and unnecessarily burdensome to subject the same customer to substantially similar customer identification and verification procedures on multiple occasions. Furthermore, those commenters urged Treasury and the Agencies to allow a bank to rely on an affiliate in order to reduce the substantial costs of maintaining duplicative records regarding identity verification under the recordkeeping provisions of the rule.

Treasury and the Agencies recognize that there may be circumstances where a bank should be able to rely on the performance by another financial institution of some or all of the elements of the bank's CIP. Therefore, the final rule provides that a bank's CIP may

include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP and thereby satisfy the bank's obligations under the rule. Reliance is permitted if a customer of the bank is opening, or has opened, an account or has established a similar banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a bank to rely on the other financial institution, such reliance must be reasonable under the circumstances, and the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator. The other financial institution also must enter into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified requirements of the bank's CIP. The contract and certification will provide a standard means for a bank to demonstrate the extent to which it is relying on another institution to perform its CIP, and that the institution has in fact agreed to perform those functions. If it is not clear from these documents, a bank must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer.

The bank will not be held responsible for the failure of the other financial institution to adequately fulfill the bank's CIP responsibilities, provided the bank can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the Agencies emphasize that the bank and the other financial institution upon which it relies must satisfy all of these conditions set forth in the rule. If they do not, then the bank remains solely responsible for applying its own CIP to each customer in accordance with this regulation.

All of the Federal functional regulators are adopting comparable provisions in their respective regulations to permit such reliance. Furthermore, the Federal functional regulators expect to share information and to cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this final rule.

The final rule issued here does not affect a bank's authority to contract for services to be performed by a third party either on or off the bank's premises. Thus, for example, a bank may contract with a third party service provider to keep its records even when the bank does not act under the reliance provision set forth in the regulation. However, Treasury and the Agencies note that the performance of these services for Federally regulated banks [33] will be subject to regulation and examination by the Agencies under other applicable laws and regulations. *See, e.g.,* 12 U.S.C. 1867.

The final rule also does not alter a bank's authority to use an agent to perform services on its behalf. Therefore, a bank is permitted to arrange for a car dealer or mortgage broker, acting as its agent in connection with a loan, to verify the identity of its customer. However, as with any other responsibility performed by an agent, and in contrast to the reliance provision in the rule, the bank ultimately is responsible for that agent's compliance with the requirements of this final rule.

Section 103.121(c) Exemptions. The proposed rule provided that the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. The proposal stated that, in issuing such exemptions, the Federal functional regulator and Treasury shall consider whether the exemption is consistent with the purposes of the BSA, consistent with safe and sound banking, and in the public interest. The proposal stated that the Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

There were a number of comments suggesting that various types of accounts be exempted from the final rule. For example, several commenters suggested that accounts of Federal, state, and local governmental entities, public companies, and correspondent banks be exempted from the final rule. One commenter suggested that student loan programs be exempted from the rule because current safeguards are sufficient to verify the identity of student loan borrowers. Another commenter suggested that small trust companies and limited purpose banks that provide trust services be exempted from the rule, because such entities are more local in operation, would be burdened by the rule, and have fewer employees to ensure compliance. Yet another commenter suggested that the NCUA exempt credit unions from the CIP requirements.

Any suggested exemptions that Treasury and the Agencies have determined to be appropriate are incorporated into the definitions of ''account'' and ''customer'' for the reasons described above. The exemption provision of the final rule is essentially adopted as proposed with respect to banks that have a Federal functional regulator. Because the final rule will also apply to certain banks that do not have a Federal functional regulator, a new provision has been added to make clear that Treasury alone will make all determinations regarding exemptions for these institutions.

Section 103.121(d) Other Information Requirements Unaffected. The proposal provided that nothing in § 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in § 103.121, as well as with the provisions of § 103.22, which require that certain information concerning the transaction be reported by filing a Currency Transaction Report (CTR). There were no comments on this provision. Therefore, Treasury and the Agencies have adopted this provision generally as proposed, except that it has been clarified to provide that nothing in § 103.121 should be construed to relieve a bank of any of its obligations, including its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103.

III. Conforming Amendments to 31 CFR 103.34

Section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Together with the proposed rule implementing section 326, Treasury, on its own authority, proposed deleting 31 CFR 103.34(a) for the following reasons.

First, the preamble for the proposal explained that Treasury regards the requirements of §§ 103.34(a)(1) and (2) as inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121. Generally §§ 103.34(a)(1) and (2) require a bank, within 30 days after

[33] Because it lacks the specific statutory authority to regulate and examine service providers, NCUA, as a matter of safety and soundness, will require credit unions to document that their service providers fully comply with this regulation and with the credit union's customer identification program.

certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under § 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to Treasury upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in proposed § 103.121 which required a bank to obtain the name, address, date of birth and an identification number from any person seeking to open a new account.

Second, § 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons [34] opening certain deposit accounts. Proposed § 103.121 did not exempt any persons from the CIP requirements. Treasury requested comment on whether any of the exemptions in § 103.34(a)(3) should apply in light of the intent and purpose of section 326 of the Act and the requirements of proposed § 103.121.

Third, § 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. In the preamble that accompanied its proposal, Treasury stated that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of ''any'' person seeking to open an account.

In addition, Treasury proposed deleting § 103.34(b)(1) which requires a bank to keep ''any notations, if such are normally made, of specific identifying information verifying the identity of the signer [who has signature authority over an account] (such as a driver's license number or credit card number).'' Treasury stated that the quoted language in § 103.34(b)(1) is inconsistent with the proposed requirements of § 103.121. For this reason, Treasury, under its own authority, proposed to delete the quoted language.

Few comments were received regarding the proposed deletion of these provisions. Some commenters agreed that § 103.34(a) should be deleted if proposed § 103.121 were adopted. One commenter suggested that § 103.34(a) should be revised to achieve the objectives of the section 326 of the Act. One commenter representing a military bank requested continuance of the exemption for agencies and instrumentalities of the Federal government that will permit exemption of commissaries, exchanges and various military organizations. Another commenter requested maintenance of the exemption for government entities, court funds, unincorporated units of tax-exempt organizations, and school thrift programs.

Treasury has determined that given the more comprehensive requirements of the final version of § 103.121, there is no longer a need for § 103.34 (a). A number of the exemptions formerly in § 103.34(a) have now been added to § 103.121. Other exemptions conflict with the language and intent of section 326 of the Act and thus were not adopted in the final rule. While § 103.34(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which banks would not be subject to a rule under the BSA requiring a customer to be identified when opening an account. Because Treasury and the Agencies do not believe such a gap period would be appropriate, the final rule—rather than withdrawing § 103.34(a)—amends the section to cut off its applicability on October 1, 2003, when § 103.121 becomes fully effective.[35]

By contrast, Treasury no longer believes that it is necessary to delete the quoted language in § 103.34(b), which requires a bank to keep ''any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number).'' The definition of ''customer'' in the final version of § 103.121 no longer includes a signatory on an account. Therefore, § 103.121 and § 103.34(b)(1) are not inconsistent and the records required to be kept in accordance with § 103.34(b)(1) will still have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, and to protect against international terrorism. Therefore, the proposal to delete the quoted language in § 103.34(b)(1) is not adopted as proposed.

IV. Technical Amendment to 31 CFR 103.11(j)

Section 103.11(j), which defines the term ''deposit account,'' contains an obsolete reference to the definition of ''transaction account,'' which is defined in § 103.11(hh). Under its own authority, Treasury proposed to correct this reference. There were no comments on this proposed technical correction. Therefore, it is adopted as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[36] *See* 5 U.S.C. 604 and 605(b).

Treasury and the Agencies have reviewed the impact of this final rule on small banks. Treasury and the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

First, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering

[34] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

[35] Appropriate conforming amendments are made to §§ 103.34(b)(11) and (12) to add a cross-reference to the Internal Revenue Code regarding the rules for determining what constitutes a taxpayer identification number.

[36] The RFA defines the term ''small entity'' in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a ''small entity'' for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. The NCUA defines ''small credit union'' as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87–2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

programs that include most of the procedures that a CIP must contain under this final rule. Banks generally undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, Federally regulated banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[37]

Second, although the final rule contains several requirements that will be new to banks we anticipate that the costs of implementing these requirements will not be economically significant. For example, the recordkeeping requirements in the final rule may impose some costs on banks to the extent that the information that must be maintained is not already collected and retained.[38] Treasury and the Agencies believe that the compliance burden is minimized for banks, including small banks, because the final rule vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

The section of the final rule that requires banks to check lists of known and suspected terrorists and terrorist organizations and to follow Federal agency directives in connection with the lists is also a new requirement that will impose nominal burden, once Treasury and the Agencies publish lists that banks must consult. However, no such lists have been issued to date. Moreover, banks already must have procedures to satisfy other similar requirements. For instance, banks already have to ensure that they do not engage in transactions involving designated foreign countries, foreign nationals, and other entities prohibited under OFAC rules. *See* 31 CFR part 500. We also understand that many banks, including small banks, use electronic search tools to check lists [39] and already use identity verification software, both as part of their customer due diligence obligations under existing BSA compliance program requirements and to detect fraud.

The notice provisions of the rule also are new. However, they are very flexible and, as written, should impose only minimal costs. The final rule permits a bank to satisfy the notice requirement by choosing from a variety of low-cost measures, such as posting a sign in the lobby or on its website, by adding it to an account statement, or using any other form of written or oral notice. In addition, the amount of time that a bank will need to develop its notices will be minimal as the final rule now contains a sample notice.

Treasury and the Agencies believe that the flexibility incorporated into the final rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

Most commenters on the proposed rule stated that Treasury and the Agencies had underestimated the burden imposed by the proposed rule. They highlighted aspects of the proposal that they maintained would have imposed excessive burdens and would have required banks to alter their current practices. Most comments focused on the proposed provisions requiring banks to verify the identity of signatories on accounts, to keep copies of documents used to verify a customer's identity, and to retain identity verification records for five years after an account is closed.

In drafting the final rule, Treasury and the Agencies have either eliminated or minimized the most significant burdens identified by commenters. In response to commenters, for example, the final rule eliminates signatories from the definition of ''customer,'' no longer requires a bank to keep copies of documents used to verify a customer's identity, and reduces the universe of records that must be kept for five years after an account is closed. Treasury and the Agencies have taken other steps that significantly reduce the scope of the rule and burdens of the rule. Many of these burden-reducing actions are described in the Paperwork Reduction Act discussion below.[40] As a result of these changes, the final rule is far more flexible and less burdensome than the proposed rule while still fulfilling the statutory mandates enumerated in section 326 of the Act.

Finally, Treasury and the Agencies did consider whether it would be appropriate to exempt small banks from the requirements of the rule. We do not believe that an exemption for small banks is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of banks, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small banks as well as large banks.

B. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Treasury submitted the final rule to the OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506–0026.

[37] *See* footnote 10.

[38] *See, e.g.*, identification and verification of customers in connection with each share or deposit account opened (31 CFR 103.34).

[39] We believe that most banks will use technology rather than manual methods to check lists. OFAC lists are generally incorporated into bank software and, in response to bank inquiries, Treasury and the Agencies have made clear that banks are permitted to share the lists they receive pursuant to section 314 of the Act with their service providers. We expect that any lists provided under section 326 of the Act will also be provided under the same conditions.

[40] In addition to the burden-reducing measures discussed in the Paperwork Reduction Act discussion, other changes include:

- A clarification that a bank must verify the customer's *identity* using the identifying information obtained. The proposed rule would have required the bank to verify all identifying information. The elimination of the requirement that a bank must obtain a physical and a mailing address from a customer opening an account. Under the final rule, the bank is only required to obtain a physical address.
- A new provision that permits a bank to rely on another financial institution to perform its CIP under certain conditions. This provision allows financial institutions that share a customer to share customer identification and verification obligations and to reduce the cost of maintaining duplicative records required by the recordkeeping provisions of the final rule.
- A revised provision that extends to customers who are individuals the exception that permits a bank to open an account for a customer that has applied for, but has not received, a taxpayer identification number.
- A new exemption for credit card accounts from the requirement that a bank obtain identifying information from the customer prior to opening an account. In connection with credit card accounts, a bank is permitted to obtain identifying information from a third party source prior to extending credit.
- A clarification stating that the government will provide lists of known or suspected terrorists and terrorist organizations to banks. Banks will not be required to seek out this information. In addition, the rule now states that the bank may determine whether a customer appears on the list within a reasonable time after the account is opened, unless it is required to do so earlier by another Federal law, regulation, or directive.
- A transition period that permits banks a period of several months to comply with the final rule.

Collection of Information Under the Proposed Rule

The proposed rule applied only to a financial institution that is a ''bank'' as defined in 31 CFR 103.11(c),[41] and any foreign branch of an insured bank. The proposed rule required each bank to establish a written CIP that must include recordkeeping procedures (proposed § 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed § 103.121(b)(5)).

The proposed rule required a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. It also required these records to be maintained at the bank for five years after the date the account is closed (proposed § 103.121(b)(3)).

The proposed rule also required a bank to give its customers ''adequate notice'' of the identity verification procedures (proposed § 103.121(b)(5)). The proposed rule stated that a bank could satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice.

Collection of Information Under the Final Rule

The final rule, like the proposed rule, requires banks to implement reasonable procedures to (1) maintain records of the information used to verify a customer's identity, and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act. However, the final rule greatly reduces the paperwork burden attributable to these requirements, as described below.

The final rule also contains a new recordkeeping provision permitting a bank to rely on another financial institution to perform some or all its CIP, under certain circumstances. Among other things, the other financial institution must provide the bank with a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

Response to Comments Received

We received approximately 500 comments on the proposed rule. Most of the commenters specifically mentioned the recordkeeping burden associated with the proposed rule. Some commenters also asked Treasury and the Agencies to clarify the meaning of ''adequate notice'' and requested that a sample notice be provided in the final rule.

Only a few commenters provided burden estimates of additional burden hours that would result from the proposed rule. However, these burden estimates did not necessarily focus on the recordkeeping and disclosure requirements in the proposal and ranged from 200 extra hours per year to 9,000 additional hours. Treasury and the Agencies believe that the final rule substantially addresses the concerns of the commenters. Specific concerns about paperwork burden have been addressed as follows:

First, the recordkeeping and disclosure burden are minimized in the final rule because Treasury and the Agencies reduced the entire scope of the final rule, by:

- Narrowing and clarifying the scope of ''account.'' The final rule specifically excludes accounts that (1) a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from a third party, and (2) accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. It also specifically excludes wire transfers, check cashing, and the sale of travelers checks, and any other product or service that does not lead to a ''formal banking relationship'' from the scope of the rule;
- Narrowing the definition of ''bank'' covered by the rule to exclude a bank's foreign branches; and
- Limiting and clarifying who is a ''customer'' for purposes of the final rule. The final rule now defines ''customer'' as ''a person that opens a new account'' making clear that a person who does not receive banking services, such as a person whose deposit or loan application is denied, is not a customer. The definition of customer also excludes signatories from the definition of ''customer.'' Moreover, the final rule excludes from the definition of ''customer'' the following readily-identifiable entities: A financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, entities described in § 103.22(d)(2)(ii)–(iv)). The final rule also excludes existing customers of the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[42]

Second, recordkeeping burden was further reduced by:

- Eliminating the requirement that a bank keep copies of any document that it relied upon in order to verify the identity of the customer and substituting a requirement that a bank's records need only include ''a description'' of any document that it relied upon in order to verify the identity of the customer. The final rule also clarifies that the records need only include ''a description'' of the methods and results of any measure undertaken to verify the identity of the customer, and of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures; and
- Reducing the length of time that records must be kept. The final rule requires that identifying information be kept for five years after the date the account is closed (or for credit card accounts, five years after the account is closed or becomes dormant). All other records may be kept for five years after the account is opened.

Third, disclosure burden was reduced by providing sample language that, if appropriate and properly provided, will be deemed adequate notice to a bank's customer. Disclosure burden also was reduced by clarifying the term ''adequate notice.''

Treasury and the Agencies believe that little additional burden is imposed as a result of the recordkeeping requirements outlined in section 103.121(b)(3), because the type of recordkeeping required by the final rule is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (*see, e.g.*, 31 CFR 103.34, requiring certain records for each deposit or share account opened).

Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in § 103.121(b)(5). This section contains a sample notice that if appropriate and

[41] This definition includes banks, thrifts, and credit unions.

[42] The proposed rule stated that the identity of an existing customer would not need to be verified if the bank (1) had previously verified the customer's identity in accordance with procedures consistent with the proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

provided in accordance with the final rule, will be deemed adequate notice. In addition, it continues to permit banks to choose among a variety of low-cost methods of providing adequate notice and to select the least burdensome method, given the circumstances under which customers seek to open new accounts.

Treasury and the Agencies also believe that nominal burden is associated with the new recordkeeping requirement in § 103.121(b)(6). This section permits a bank to rely on another financial institution to perform some or all its CIP under certain conditions, including the condition that the financial institution enter into a contract with the bank providing that it will certify annually to the bank that it (1) has implemented its anti-money laundering program and (2) will perform (or its agent will perform) the specified requirements of the bank's CIP. Not all banks will choose to rely on a third party. For those that do, the minimal burden of retaining the certification described above should allow them to reduce net burden under the rule by such reliance.

Burden Estimates

Treasury and the Agencies have reconsidered the burden estimates published in the proposed rule, given the comments stating that the burdens associated with the paperwork collections were underestimated. Having done so, and considering the reduction in burden taken in this final rule, Treasury and the Agencies have adjusted their estimates of the paperwork burden of this rule. The burden estimates that follow are estimates of the incremental burden imposed upon banks by this final rule, recognizing that some of the requirements in this rule are a usual and customary practice in the banking industry, or duplicate other regulatory requirements.

The potential respondents are national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); Federally insured credit unions (NCUA financial institutions); and certain non-Federally regulated credit unions, private banks, and trust companies (FinCEN institutions).

Estimated number of respondents:
OCC: 2207.
Board: 1240.
FDIC: 5,500.
OTS: 962.
NCUA: 9,688.
FinCEN: 2,460.

Estimated average annual recordkeeping burden per respondent: 10 hours.

Estimated average annual disclosure burden per respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 242,627 hours.

Treasury and the Agencies invite comment on the accuracy of the burden estimates and invite suggestions on how to further reduce these burdens. Comments 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 (1506–0026), 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.

Executive Order 12866

Treasury, the OCC, and OTS have determined that the final rule is not a ''significant regulatory action'' under Executive Order 12866 for the following reasons.

The rule follows closely the requirements of section 326 of the Act. Moreover, Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the final rule because the procedures are a matter of good business practice. In addition, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this final rule.

At the proposed rule stage, Treasury, the OCC, and OTS invited national banks, the thrift industry, and the public to provide any cost estimates and related data that they think would be useful in evaluating the overall costs of the rule. Most of the cost estimates provided by commenters related to the requirements in the proposed rule that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed. As described in the preamble, the final rule eliminates signatories from the definition of ''customer,'' and no longer requires a bank to keep copies of documents used to verify a customer's identity. The final rule also reduces the universe of records that must be kept for five years after an account is closed. Treasury, the OCC and the OTS have taken other steps that significantly reduce the scope of the rule and the burden of the rule. These burden-reducing measures are described in the Paperwork Reduction Act discussion and Regulatory Flexibility Act discussion, above.[43]

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 563

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

12 CFR Part 748

Credit unions, Crime, and Security measures.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

[43] For these same reasons, and consistent with section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Treasury, the OTS and the OCC have also determined that this final rule will not result in expenditures by State, local, and tribal governments in the aggregate, or by the private sector of $100 million or more in any one year, and therefore the rule is not subject to the requirements of section 202 of that Act.

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. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

§ 103.11 [Amended]

■ 2. Section 103.11(j) is amended by removing ''paragraph (q)'' and adding ''paragraph (hh)'' in its place.

§ 103.34 [Amended]

■ 3. Section 103.34 is amended as follows:

■ a. By amending the first sentence of paragraph (a)(1) to add the words ''and before October 1, 2003'' after the words ''May 31, 1978'' and after the words ''June 30, 1972'';

■ b. By amending paragraph (b)(11) to add the words ''as determined under section 6109 of the Internal Revenue Code of 1986'' after the words ''taxpayer identification number;'' and

■ c. By amending paragraph (b)(12) to add the words ''as determined under section 6109 of the Internal Revenue Code of 1986'' after the words ''taxpayer identification number.''

■ 2. Subpart I of part 103 is amended by adding new § 103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) *Definitions.* For purposes of this section:

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(*1*) An individual who lacks legal capacity, such as a minor; or

(*2*) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person.*

(b) *Customer Identification Program: minimum requirements.*

(1) *In general.* A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required.* (A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.*

Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name,

address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: April 17, 2003.

In concurrence:

John D. Hawke, Jr.,

Comptroller of the Currency.

In concurrence:

By order of the Board of Governors of the Federal Reserve System, April 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

In concurrence:

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 16th day of April, 2003.

Valerie J. Best,

Assistant Executive Secretary.

In concurrence:

Dated: April 9, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision.

In concurrence:

Dated: April 7, 2003.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set out in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

Subpart C—Procedures for Monitoring Bank Secrecy Act Compliance

■ 1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884 and 3401–3422; 31 U.S.C. 5318.

■ 2. In § 21.21:

■ A. Revise the section heading; and

■ B. Revise § 21.21(b) to read as follows:

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) *Establishment of a BSA compliance program.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: April 17, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set out in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. Revise § 208.63(b) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

* * * * *

(b) *Establishment of BSA compliance program.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be

implemented as part of the BSA compliance program required under this section.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.,* 1818, 1835a, 1841 *et seq.,* 3101 *et seq.,* and 3901 *et seq.;* 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

■ 2. In § 211.5, add new paragraph (m) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) [Reserved]

(2) *Customer identification program.* Each Edge or agreement corporation is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

■ 3. In § 211.24, add new paragraph (j) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(j) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) [Reserved]

(2) *Customer identification program.* Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

By order of the Board of Governors of the Federal Reserve System, April 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set out in the preamble, the FDIC amends title 12, chapter III of the Code of Federal Regulations, as set forth below:

PART 326—Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

■ 1. The authority citation for part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1883; 31 U.S.C. 5311–5314 and 5316–5332.2.

■ 2. Revise § 326.8(b) to read as follows:

§ 326.8 Bank Secrecy Act compliance.

* * * * *

(b) *Compliance procedures.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the Bank Secrecy Act compliance program required under this section.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 16th day of April, 2003.

Valerie J. Best,

Assistant Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set out in the preamble, OTS amends title 12, chapter V of the Code of Federal Regulations, as set forth below:

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 2. In § 563.177:

■ A. Revise the section heading; and

■ B. Revise paragraph (b) to read as follows:

§ 563.177 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) *Establishment of a BSA compliance program.* (1) *Program requirement.* Each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(2) *Customer identification program.* Each savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OTS and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: April 9, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

■ For the reasons set out in the preamble, NCUA amends title 12, chapter VII of the Code of Federal Regulations, as set forth below:

PART 748—SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

■ 1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

■ 2. In § 748.2:

■ A. Revise the section heading; and

■ B. Revise paragraph (b) to read as follows:

§ 748.2 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) *Establishment of a BSA compliance program.* (1) *Program requirement.* Each federally-insured credit union shall develop and provide for the continued administration of a

program reasonably designed to assure and monitor compliance with the recordkeeping and recording requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the credit union's board of directors, and reflected in the minutes of the credit union.

(2) *Customer identification program.* Each federally-insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: April 7, 2003.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 03–11019 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P; 6720–01–P; 6210–01–P; 7537–01–P; 4810–33–P; 6714–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47752, File No. S7–25–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA32

Customer Identification Programs for Broker-Dealers

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Section 326 requires the Secretary of the Treasury to jointly prescribe with the Securities and Exchange Commission a regulation that, at a minimum, requires brokers or dealers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person's identity; and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to brokers or dealers by any government agency. This final regulation applies to brokers or dealers in securities except for brokers or dealers that register with the Securities and Exchange Commission solely because they effect transactions in securities futures products.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Brokers or dealers subject to this final regulation must comply with it by October 1, 2003.

FOR FURTHER INFORMATION CONTACT: *Securities and Exchange Commission:* Division of Market Regulation, (202) 942–0177 or *marketreg@sec.gov.*

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the General Counsel (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act or Act).[1] Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA).[2] These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury (Secretary or Treasury) to prescribe regulations ''setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.''

Section 326 applies to all ''financial institutions.'' This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, brokers and dealers in securities, investment companies, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.[3]

The regulations implementing section 326 must require, at a minimum, financial institutions to implement reasonable customer identification procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the SEC jointly proposed a rule to implement section 326 with respect to brokers or dealers in securities (broker-dealers).[4] We received 20 comments in

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[1] Pub. L. 107–56.

[2] 31 U.S.C. 5311 *et seq.*

[3] *See* 31 U.S.C. 5312(a)(2), 5312(c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the ''banking agencies''), the Securities and Exchange Commission (Commission or SEC), and the Commodity Futures Trading Commission (CFTC).

[4] Customer Identification Programs for Broker-Dealers, Securities Exchange Act of 1934 Release No. 46192 (July 12, 2002), 67 FR 48306 (July 23, 2002) (Notice of Proposed Rulemaking or NPRM). Treasury simultaneously published (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks; (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a federal functional regulator; (3) jointly with the SEC, a proposed rule applicable to mutual funds; and (4) jointly with the CFTC, a proposed rule applicable to futures commission merchants and introducing brokers. Customer Identification Programs for Banks, Savings Associations, and Credit Unions, 67 FR 48290 (July 23, 2002); Customer Identification Programs for Certain Banks (Credit Unions, Private Banks and Trust Companies) That Do Not Have a Federal Functional Regulator, 67 FR 48299 (July 23, 2002); Customer Identification Programs for Mutual Funds, IC–25657 (July 12, 2002), 67 FR 48318 (July 23, 2002); Customer Identification Programs for

Continued

response to the proposal.[5] Commenters included broker-dealers, financial services holding companies and trade associations. Commenters generally supported the proposal but suggested revisions.

Fifteen commenters addressed the proposed rule's definition of ''customer.'' The inclusion in the definition of persons with authority over an account caused the greatest number of comments. The commenters provided several reasons why verifying this class of persons would be difficult. Many suggested using a risk-based approach. Commenters also suggested that the definition not include public companies, government agencies, investment advisors, investment advisor sub-account holders, beneficiaries of retirement accounts, or persons whose account relationship with the broker-dealer was limited to delivery-versus-payment transactions.

Twelve commenters addressed the proposed rule's recordkeeping requirements. The primary concern noted was the requirement to retain copies of documents used to verify the identities of customers. This was stated to be a substantial recordkeeping burden. Commenters suggested, as an alternative, requiring a record of the type of document used. Some commenters also were concerned about the requirement that these records be maintained until five years after the account is closed. They suggested shorter retention periods.

Twelve commenters addressed the effective date of the proposed rule. They suggested varying implementation periods ranging from 90 days to two years.

Nine commenters addressed the verification requirement in the proposed rule. Several commenters suggested that existing customers or long-time acquaintances need not be verified. Others suggested additional verification methods such as using legal opinions and annual reports. Two commenters requested clarification that broker-dealers would not be responsible for verifying the validity of verification documents. One commenter requested clarification that customers could be verified using both documentary and non-documentary methods.

Seven commenters addressed the proposed rule's definition of ''account.'' Some requested that the definition only apply to accounts established to provide ongoing services. Others suggested that the definition should not include the sale of mutual funds or variable life products on a subscription way basis or dealer-to-dealer delivery-versus-payment transactions.

Seven commenters addressed the proposed rule's customer notice requirement. Three commenters suggested that the rule set forth model notice language. Two commenters suggested that the rule permit notice to be given within a reasonable time after the account is opened.

Six commenters addressed the provision in the proposed rule permitting reliance between clearing and introducing broker-dealers. Generally, most of the commenters suggested the provision be expanded to allow for reliance between an executing dealer and prime broker and between a broker-dealer and its affiliates and other types of financial institutions such as banks, investment advisers and commodities firms.

Three commenters addressed the requirement to collect minimum types of identifying information. One suggested that the rule not require a residential address since some persons may not have such an address. One suggested that the rule allow accounts to be opened even if all the required identifying information is not obtained, provided the broker-dealer has a reasonable belief that it knows the true identity of the customer. One suggested that the requirement be risk-based.

Three commenters addressed the requirement to check customers against terrorist lists. One suggested that FinCEN act as a clearinghouse for such lists. One suggested that the rule identify the lists that must be checked and specify which agencies can provide them. One suggested permitting the lists to be checked within a reasonable time after an account is opened and that the lists be provided in a single electronic format.

One commenter addressed the proposed rule's definitions of ''U.S. person'' and ''Non-U.S. person.'' The commenter suggested that the rule use the definitions on certain Internal Revenue Service forms.

One commenter expressed concern as to whether the Fair Credit Reporting Act (FCRA) would apply to verification database searches. It requested an exemption from the FCRA for such searches.

We have modified the proposed rule in light of many of these comments and comments made with respect to the customer identification and verification rules being adopted for other financial institutions. The section-by-section analysis that follows discusses the comments and the modifications that we have made to the rule.

C. Codification of the Joint Final Rule

The final rule is being issued jointly by Treasury, through FinCEN, and the SEC. It applies to any person that is registered or required to be registered with the Commission as a broker or dealer under the Securities Exchange Act of 1934 (Exchange Act),[6] except persons who register solely for the purpose of effecting transactions in securities futures products.[7] The substantive requirements of this joint final rule will be codified as part of Treasury's BSA regulations located in 31 CFR Part 103.[8] SEC Rule 17a–8[9] requires broker-dealers to comply with all reporting, recordkeeping and record retention requirements under the BSA. The final rule being adopted today falls directly within the scope of Rule 17a–8, and will be examined for, and enforced, by the Commission and appropriate self-regulatory organizations.

Final rules governing the applicability of section 326 to certain other financial institutions, including banks, thrifts, credit unions, mutual funds and futures commission merchants, are being issued separately. Treasury, the SEC, the CFTC and the banking agencies consulted extensively in the development of all joint rules implementing section 326 of the Act. These participating agencies intend the effect of the final rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal Functional regulators.

D. Compliance Date

Many commenters requested that broker-dealers be given adequate time to develop and implement the requirements of any final rule implementing section 326. The transition periods suggested by

Futures Commission Merchants and Introducing Brokers, 67 FR 48328 (July 23, 2002). Treasury, the Commission, the CFTC, and the banking agencies received approximately 500 comments in response to these proposed rules. Many of those commenters raised issues similar to those we received in connection with the proposal respecting broker-dealer customer identification programs.

[5] The comment letters are available for public inspection and copying in the SEC's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7–25–02).

[6] 15 U.S.C. 77a *et seq.*

[7] Brokers or dealers that limit their securities business to effecting transactions in securities futures products may register with the Commission pursuant to 15 U.S.C 78o(b)(11). These persons will be subject to the customer identification rule being issued by the CFTC.

[8] The regulation will be codified at 31 CFR 103.122.

[9] 17 CFR 240.17a–8.

commenters ranged from 90 days to two years after the publication of a final rule.

The final rule modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, we recognize that some broker-dealers will need time to develop and implement the customer identification program (CIP) required under the rule, as doing so may include various measures, such as training staff, reprinting forms, and programming automated systems. Accordingly, although this rule will be effective 30 days after publication, broker-dealers will have a transition period to implement the rule. Broker-dealers must fully implement their CIPs under the final rule by October 1, 2003.[10]

II. The Joint Final Rule

A. Section-by-Section Analysis

Section 103.122(a) Definitions

Section 103.122(a)(1) Account. We proposed to define ''account'' as any formal business relationship with a broker-dealer established to effect financial transactions in securities, including, but not limited to, the purchase or sale of securities, securities loan and borrowed activity or the holding of securities or other assets for safekeeping or as collateral.[11]

Four commenters suggested that the definition of ''account'' incorporate the concept of ongoing relationships to make it consistent with the rules proposed by the banking agencies. The bank rules limited the definition of ''account'' to ''ongoing transactions'' to specifically address situations where a person obtains certain services or products from a bank such as cashing or buying a check or purchasing a wire transfer or money order. In the final rules being issued by Treasury and the banking agencies, the definition of account no longer contains the term ''ongoing.'' Instead, the definition of ''account'' now specifically excludes these types of products or services or any others where a ''formal banking relationship'' is not established with the person.[12] They are being excluded because, standing alone, they do not establish a formal banking relationship. Moreover, they generally are covered by other provisions of the BSA.[13] Except in conjunction with an established securities account, broker-dealers do not offer products or services similar to those excluded in the bank rules. Thus, we did not include the term ''ongoing'' in the definition of account or adopt the specific exclusion included in the bank rule.[14]

Two commenters requested clarification as to whether the sale of mutual fund shares or variable life annuities on a subscription way basis constituted an account relationship, given that the broker-dealer's role in the transactions could be considered limited. We believe these transactions can give rise to an account relationship and, therefore, have not excluded them specifically from the definition of account. However, changes we made to the reliance and recordkeeping sections of the rule address many of the concerns raised by these commenters.[15]

We also have removed the word ''business'' from the definition of account. This change is made to clarify further that the rule applies to relationships established for the purpose of effecting securities transactions as opposed to general business dealings, such as those established in connection with a broker-dealer's own operations or premises.

The definition of ''account'' in the proposed rule contained a second sentence setting forth examples of the types of accounts that would constitute an ''account'' for the purposes of the rule.[16] The examples—cash accounts, margin accounts, prime brokerage accounts and accounts established to engage in securities repurchase transactions—were not intended to be an exhaustive list. These types of accounts remain ''accounts'' for the purposes of the final rule. However, the final rule text no longer specifically cites them as examples in order to make clear that the list was not exhaustive.[17]

The final rule now contains two exclusions from the definition of ''account.'' The first is for certain transferred accounts.[18] The Notice of Proposed Rulemaking stated that transfers of accounts from one broker-dealer to another were outside the definition of ''account'' for purposes of the proposed rule.[19] The final rule codifies and expands this exception, by excluding from the definition of ''account'' any account that a broker-dealer acquires through an acquisition, merger, purchase of assets, or assumption of liabilities. Customers do not initiate these transfers and, therefore, the accounts do not fall within the scope of section 326.[20] Transfers may, however, fall within the broader scope of the anti-money laundering program rules required under section 352 of the USA PATRIOT Act.[21] Accordingly, in developing and implementing programs under section 352, broker-dealers should consider situations where it would be appropriate to verify the identity of customers associated with transferred accounts.[22]

The rule also now excludes from the definition of ''account'' accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974.[23] Seven commenters recommended that the rule not cover these types of accounts. These accounts are less susceptible to be used for the financing of terrorism and money laundering because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with federal regulations. These regulations impose, among other requirements, low contribution limits and strict distribution requirements.

Section 103.122(a)(2) Broker-dealer. We proposed to define ''broker-dealer'' as any person registered or required to

[10] The CIP rules issued by the other Federal functional regulators also have an implementation date of October 1, 2003.

[11] The proposed rule text is set forth in the NPRM, 67 FR at 48317.

[12] *See* 31 CFR 103.121(a)(1).

[13] For example, 31 CFR 103.29 requires banks to obtain and verify identifying information of any person who purchases a bank check or draft, cashier's check, money order or traveler's check of $3,000 or more.

[14] *See* final rule, paragraph (a)(1)(i).

[15] The changes—discussed later in the Release—permit broker-dealers to rely on mutual funds to perform the CIP requirements and eliminate the requirement to retain a copy of documents used to verify the identity of a customer.

[16] *See* NPRM, 67 FR at 48317.

[17] *See* final rule, paragraph (a)(1)(i).

[18] *See* final rule, paragraph (a)(1)(ii)(A).

[19] *See* NPRM, Section II.A, 67 FR at 48307.

[20] Transfers of accounts that result from an introducing broker-dealer changing its clearing firm would fall within this exclusion. However, the introducing firm and the new clearing firm would need to meet the requirements in paragraph (b)(6) (such as entering into a contract and providing certifications) to the extent they intend to rely on each other to undertake CIP requirements with respect to customers that open accounts after the transfer.

[21] Section 352 requires brokers and dealers to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 22, 2002, the Commission approved rule changes submitted by the NASD and the NYSE. Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002). These rules (NASD Rule 3011 and NYSE Rule 445) set forth minimum requirements for these programs.

[22] For example, it may be appropriate to verify transferred accountholders if the accounts are coming from a broker-dealer that was found to have failed to establish or maintain an adequate CIP.

[23] Final rule, paragraph (a)(1)(ii)(B).

be registered with the Commission, except persons who register solely to effect transactions in securities futures products.[24] There were no comments on this definition and we are adopting it as proposed.[25]

Section 103.122(a)(3) Commission. We proposed to define ''Commission'' as the United States Securities and Exchange Commission.[26] There were no comments on this definition and we are adopting it as proposed.[27]

Section 103.122(a)(4) Customer. We proposed ''customer'' to mean any person who opens a new account with a broker-dealer, and any person granted authority to effect transactions in an account.[28] Fifteen commenters expressed concern about the proposed definition. Nine commenters suggested that the definition not include persons with authority over accounts. Some suggested that these persons be excluded from the definition entirely while others proposed using a risk-based approach. Seven commenters suggested that the sponsors of employee benefit plans be considered customers, rather than the beneficiaries. Three commenters suggested that the definition of ''customer'' exclude beneficiaries of trust and escrow accounts. Three commenters suggested that the definition exclude beneficiaries of omnibus accounts. Two commenters suggested that the definition exclude persons who are allocated portions of delivery-versus-payment securities transactions at the direction of an investment advisor. One commenter suggested that the definition may not capture registered owners of an account if someone else undertook the necessary steps to open the account for the owners. One commenter suggested that the definition exclude banks, government agencies and public companies. We have addressed most of these comments and other issues through revisions to the definition of customer and through changes made to other sections of the rule.

For consistency with the Act, the final rule defines ''customer'' as ''a person that opens a new account.'' [29] This means the person identified as the accountholder, except in the case of minors and non-legal entities. It does not refer to persons who fill out the account opening paperwork or provide information necessary to set up an account, if such persons are not the accountholder as well. Thus, under this rule, a broker-dealer is not required to look through a trust, or similar account to its beneficiaries, and is required only to verify the identity of the named accountholder.[30] Similarly, with respect to an omnibus account established by an intermediary, a broker-dealer is not required to look through the intermediary to the underlying beneficial owners, if the intermediary is identified as the accountholder.[31]

As mentioned, we received the greatest number of comments for defining persons with authority over an account as ''customers.'' This component of the companion CIP rules proposed for banks, mutual funds and commodities firms also garnered a great deal of comment. Commenters asserted that the proposal in this respect was overbroad and unduly burdensome, and would not further the goals of the statute.[32] Some commenters did acknowledge that a risk-based approach would be appropriate.

After revisiting this component of the ''customer'' definition, we have determined that requiring limited resources to be expended on verifying the identities of persons with authority over accounts could interfere with a broker-dealer's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the final rule does not include persons with authority over accounts in the definition of ''customer.'' [33] Instead, paragraph (b)(2)(ii)(C) of the final rule requires a broker-dealer's CIP to address situations where the broker-dealer will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account in order to verify the customer's identity.

The definition of ''customer'' has been revised to clarify the treatment of minors and informal groups (non-legal entities) with a common interest (*e.g.,* civic clubs).[34] In the case of a minor or informal group, the ''customer'' for purposes of the rule is the individual who undertakes to open the account in the name of the minor or the group. Generally, this will be the person who fills out the account opening paperwork and provides the information necessary to set up the account in the name of the minor or group.

In order to make the rule less burdensome, the final rule excludes from the definition of ''customer'' certain readily identifiable entities, including: (1) Financial institutions regulated by a federal functional regulator; (2) banks regulated by a state bank regulator; and (3) persons described in section 103.22(d)(2)(ii)–(iv) of the BSA regulations. These excluded persons include entities such as governmental agencies and instrumentalities and companies that are publicly traded.[35] The definition of ''customer'' also excludes a person who has an existing account with the broker-dealer, provided that the broker-dealer has a reasonable belief that it knows the true identity of the person.

Section 103.122(a)(5) Federal functional regulator. We have added a definition of ''Federal functional regulator'' to the final rule.[36] The term is used in connection with the new provision in the rule allowing broker-dealers to rely on certain other financial institutions.[37] One of the requirements for such reliance is that the other financial institution be regulated by a Federal functional regulator. The final rule uses the definition of ''Federal functional regulator'' in section 103.120(a)(2) of the BSA regulations, meaning each of the banking agencies, the SEC and the CFTC.

Section 103.122(a)(6) Financial institution. We have added a definition of ''financial institution'' to the final rule.[38] The term is used in connection with the new provision in the rule allowing broker-dealers to rely on

[24] *See* NPRM, 67 FR at 48317.

[25] *See* final rule, paragraph (a)(2).

[26] *See* NPRM, 67 FR at 48317.

[27] *See* final rule, paragraph (a)(3).

[28] *See* NPRM, 67 FR at 48317.

[29] Final rule, paragraph (a)(4)(i)(A).

[30] However, as discussed below, under paragraph (b)(2)(ii)(C) of the final rule, a broker-dealer, based on its risk-assessment of a new account, may need to take additional steps to verify the identity of a customer that is not an individual, such as obtaining information about persons with control over the account. In addition, the due diligence procedures required under other provisions of the BSA or the securities laws may require broker-dealers to look through to owners of certain types of accounts.

[31] The final rule does not affect any requirements under 17 CFR 240.17a–3(a)(9) to make records with respect to the beneficial owners of certain accounts.

[32] For example, commenters pointed out that corporations and other entities may have a substantial number of individuals authorized to act on their behalf, and that administrative personnel and other individuals acting on the entity's behalf may pose a minimal risk of money laundering, especially when the entity is a publicly traded company. Several commenters emphasized that requiring an individual employee to disclose personal information to all of the employer's financial institutions may be an unwarranted intrusion into the privacy of those individuals, increasing their risk of becoming victims of identity theft.

[33] *See* final rule, paragraph (a)(4).

[34] *See* final rule, paragraph (a)(4)(i)(B).

[35] *See* final rule, paragraph (a)(4)(ii). Section 103.22(d)(2)(iv) exempts publicly traded companies only to the extent of their domestic operations. Accordingly, a broker-dealer's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

[36] Final rule, paragraph (a)(5).

[37] *See* final rule, paragraph (b)(6).

[38] Final rule, paragraph (a)(6).

certain other ''financial institutions.'' The definition of ''financial institution'' cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of ''financial institution'' than that in section 103.11 of the BSA regulations, and includes entities such as commodities firms.

Section 103.122(a)(7) Taxpayer identification number. The proposed rule contained a definition of ''taxpayer identification number'' because that term is used later in the rule with respect to the types of information broker-dealers must collect from customers.[39] The term was defined by referencing the provisions of section 6109 of the Internal Revenue Code of 1986 and the regulations of the Internal Revenue Service (IRS) promulgated under that act. There were no comments on this approach and, therefore, we have adopted it as proposed.[40]

Section 103.122(a)(8) U.S. Person and § 103.131(a)(9) Non-U.S. Person

The proposed rule defined ''U.S. person'' as an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States.[41] A ''non-U.S. person'' was defined as a person who did not satisfy either of these criteria.[42] One commenter suggested that the definitions of ''U.S. person'' and ''non-U.S. person'' should comport with the definitions in certain IRS forms.

We believe that the proposed definitions of ''U.S. person'' and ''Non-U.S. person'' are better standards for purposes of this final rule than the IRS definitions. Adoption of the IRS definition of ''U.S. person'' would require broker-dealers to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a broker-dealer will not necessarily need to establish whether a potential customer is a U.S. citizen. The broker-dealer will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the broker-dealer may then accept alternative forms of identification. Therefore, the definitions are adopted as proposed.[43]

Section 103.122(b) Customer Identification Program: Minimum Requirements

Section 103.122(b)(1) In General

We proposed to require that each broker-dealer establish, document, and maintain a written CIP as part of its required anti-money laundering (AML) program,[44] and that the procedures of the CIP enable the broker-dealer to form a reasonable belief that it knows the true identity of a customer.[45] The CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including the broker-dealer's size; location and methods of opening accounts, the types of accounts maintained for customers and types of transactions executed for customers, and the broker-dealer's reliance on another broker-dealer.[46]

The NPRM discussed these risk factors and explained that, although the rule requires certain minimum identifying information and suitable verification methods, broker-dealers should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.[47] Commenters generally supported the approach of the proposed general CIP requirements.

In the final rule, paragraph (b)(1) continues to set forth the general requirement that a broker-dealer must establish, document, and maintain a written CIP as part of its required AML program. It now provides that the CIP should be appropriate for the broker-dealer's size and business and that, at a minimum, it must contain the requirements set forth in paragraphs (b)(1) through (b)(5) (which are discussed below). The final rule was re-organized in order to be structurally consistent with the rules being issued by the banking agencies. Thus, requirements that had been set forth in paragraphs (c), (d), (e), (f), (g) and (h) in the proposed rule are now contained in paragraphs (b)(2) through (b)(5) of the final rule to the extent they have been adopted.[48] The rule's structure was changed in order to avoid causing confusion by having different looking rules and to affirm the intent of Treasury and the Federal functional regulators that all the CIP rules impose the same requirements.

Finally, the reference to risk factors has been moved to paragraph (b)(2) of the final rule, which requires broker-dealers to establish identity verification procedures. This change was made to highlight that the risk factors should be considered specifically when developing identification verification procedures.[49]

Section 103.122(b)(2) Identity Verification Procedures

We proposed to require that a broker-dealer's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[50] Commenters supported these general requirements, although several commenters recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and we are adopting the provisions on identity verification procedures substantially as proposed.[51] Under the final rule, a broker-dealer's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.[52] Such procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer.[53] The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the

[39] *See* NPRM, 67 FR at 48317.

[40] *See* final rule, paragraph (a)(7).

[41] The proposed rule contained a definition of ''person'' that cross-referenced the definition in section 103.11(z) of the BSA regulations. Since the final rule is being codified in 31 CFR Part 103, it will incorporate the definition in section 103.11(z) without the need for a specific citation. Therefore, the citation has been removed from the final rule. The definition of ''person'' in section 103.11(z) applicable to the final rule is: ''an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.''

[42] As described in greater detail below, a broker-dealer is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the broker-dealer may obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

[43] *See* final rule, paragraphs (a)(8) and (a)(9).

[44] NASD Rule 3011 and NYSE Rule 445 set forth minimum requirements for these programs.

[45] *See* NPRM, 67 FR at 48317.

[46] *Id.*

[47] *See* NPRM, Section II.B, 67 FR at 48307–48308.

[48] Paragraph (b)(6) of the final rule is not specified as a minimum CIP requirement because it contains the provisions permitting broker-dealers to rely on another financial institution. Reliance under this paragraph is optional.

[49] The other requirements of the final rule—such as providing notice to customers, checking government lists, and recordkeeping—are standard requirements that may not vary depending on risk factors.

[50] *See* NPRM, 67 FR at 48317.

[51] *See* final rule, paragraph (b)(2).

[52] *Id.*

[53] *Id.*

various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base.[54]

Section 103.122(b)(2)(i) Customer Information Required

The proposed rule would have required a broker-dealer's CIP to require the firm to obtain certain identifying information about each customer, including, at a minimum: (1) Name; (2) date of birth, for a natural person; (3) certain addresses;[55] and (4) identification number.[56] The NPRM further stated that in certain circumstances a broker-dealer should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.[57]

Three commenters submitted comments on the required information component of the proposed rule. One commenter pointed out that certain persons may not have permanent residential addresses because they are military personnel living overseas or are living on boats. This commenter suggested the rule only require that a mailing address be obtained. Another commenter suggested that the rule permit broker-dealers to open an account even if all the minimum identifying information is not obtained, provided the broker-dealer has a reasonable belief that it knows the customer's true identity. The final commenter suggested the rule be risk-based with respect to the required minimum information. This commenter also stated that the rule should require a mailing address only.

We are adopting the customer information provisions substantially as proposed with changes to accommodate individuals who may not have physical addresses.[58] We believe the minimum required information is collected by most broker-dealers already, is necessary for the verification process and serves an important law enforcement function. Accordingly, prior to opening an account, a broker-dealer must obtain, at a minimum, a customer's (1) name; (2) date of birth, for an individual; (3) address; and (4) identification number.[59] The address must be (1) for an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.[60]

We are adopting the identification number requirement substantially as proposed.[61] For a customer that is a U.S. person, the identification number is a taxpayer identification number (social security number or employer identification number).[62] For a customer that is not a U.S. person, the identification number is one or more of the following: A taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[63] This provision provides a broker-dealer with some flexibility to choose among a variety of information numbers that it may accept from a non-U.S. person.[64] However, the identifying information the broker-dealer accepts must permit the firm to form a reasonable belief that it knows the true identity of the customer.[65]

The proposed rule included an exception from the requirement to obtain a taxpayer identification number from a customer opening a new account.[66] The exception would have allowed a broker-dealer to open an account for a person that has applied for, but has not yet received, an employer identification number (EIN).[67] We are adopting an expanded version of this exception in the final rule.[68] As proposed, the exception was limited to persons that are not natural persons.[69] On further consideration, we have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a taxpayer identification number.[70] We also have modified the exception to reduce the recordkeeping burden. The proposed rule would have required the broker-dealer to retain a copy of the customer's application for a taxpayer identification number.[71] The final rule permits the broker-dealer to exercise discretion to determine how to confirm that a person has filed an application.[72]

Section 103.122(b)(2)(ii) Customer Verification

We proposed to require that a broker-dealer's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.[73] We also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[74] The NPRM stated that a broker-dealer need not verify each piece of identifying information if it is able to form a reasonable belief that it knows

[54] *Id.*

[55] We proposed to require broker-dealers to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing address (if different) for a person other than a natural person. *See* NPRM, 67 FR at 48317.

[56] We proposed to require broker-dealers to obtain: (1) For a customer that is a U.S. person, a taxpayer identification number, or (2) for a customer that is not a U.S. person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. *See* NPRM, 67 FR at 48317.

[57] *See* NPRM, Section II.C, 67 FR at 48308–48309.

[58] Final rule, paragraph (b)(2)(i)(A).

[59] Based on an assessment of the relevant risk factors, the broker-dealer's CIP may require a customer to provide additional information to establish the customer's identity.

[60] Final rule, paragraph (b)(2)(i)(A)(*3*).

[61] *See* NPRM, 67 FR at 48317.

[62] Final rule, paragraph (b)(2)(i)(A)(*4*).

[63] *Id.*

[64] The final rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a broker-dealer. *See* Treasury Department, ''A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act,'' October 21, 2002.

[65] We emphasize that the rule neither endorses nor prohibits a broker-dealer from accepting information from particular types of identification documents issued by foreign governments. The broker-dealer must determine, based upon appropriate risk factors, including those discussed above, whether the information presented by a customer is reliable. We recognize that a foreign business or enterprise may not have an identification number. Therefore the final rule notes that when opening an account for such a customer, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

[66] *See* NPRM, 67 FR at 48317.

[67] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning ''awaiting-TIN [taxpayer identification number] certificates.'' The IRS permits a taxpayer to furnish an ''awaiting-TIN certificate'' in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.* interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)-3.

[68] *See* final rule, paragraph (b)(2)(i)(B).

[69] In the NPRM, we explained that the exception was for new businesses that may need to open a brokerage account before they receive an EIN from the Internal Revenue Service. *See* NPRM, Section II.C, 67 FR at 48309.

[70] Final rule, paragraph (b)(2)(i)(B).

[71] *See* NPRM, 67 FR at 48317.

[72] The broker-dealer's CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

[73] *See* NPRM, 67 FR at 48317.

[74] *Id.*

the customer's identity after verifying only certain of the information.[75] The NPRM also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner.[76] It noted that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending, and that the appropriate amount of time may depend on the type of account opened, whether the customer opens the account in person, and the type of identifying information available.[77]

Five commenters suggested that the rule should not require existing customers to be verified. Two of these commenters also pointed out that a second account is not created when a customer changes a cash account into a margin account. Accordingly, they argued that the changing of a cash account into a margin account should not be considered the opening of a new account. As discussed above, the definition of ''customer'' in the final rule has been changed to exclude persons who have an existing account at the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the customer's true identity. Accordingly, broker-dealers will not be required to verify the identities of such persons. One commenter also suggested that the rule should not require broker-dealers to verify the identities of personal acquaintances.

The final rule adopts the customer verification requirements substantially as proposed, with modifications that conform this provision of the final rule to the revised definition of ''customer,'' described above. The final rule requires that the CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time before or after the account is opened.[78] The final rule does not require the identity of a person granted authority to effect transactions in an account to be verified.

As stated in the NPRM, broker-dealers must reasonably exercise the flexibility to undertake verification before or after an account is opened. The amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in-person, and the type of identifying information that is available.[79]

The final rule also requires that a broker-dealer's CIP include procedures that describe when the firm will use documents, non-documentary methods, or a combination of both to verify customer identities.[80] Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the broker-dealer's assessment of the relevant risk factors.

Finally, with respect to the comment on personal acquaintances, we believe it would be inappropriate to provide special treatment for such customers. The rule is sufficiently flexible to make their verification as unobtrusive as possible.

Section 103.122(b)(2)(ii)(A) Customer Verification—Through Documents

We proposed to require that a broker-dealer's CIP describe documents that the firm will use to verify customers' identities.[81] Suitable documents for verification would include: (1) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and (2) for persons other than natural persons, documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Three commenters submitted comments on this aspect of the rule. Two commenters sought clarification that broker-dealers will not be responsible for ensuring the validity of verifying documents. One commenter suggested that certificates of trust and legal opinions should be suitable documents for verification.

The final rule attempts to strike an appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement. The final rule requires a broker-dealer's CIP to contain procedures that set forth the documents that the firm will use for verification.[82] Each broker-dealer will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify the true identities of customers.

In light of recent increases in identity theft and the availability of fraudulent documents, we believe that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable.[83] However, we encourage broker-dealers to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, we encourage broker-dealers to use a variety of methods to verify the identity of a customer, especially when the broker-dealer does not have the ability to examine original documents.

The final rule continues to include, without significant change, an illustrative list of identification documents.[84] A broker-dealer may use other documents, provided they allow the firm to establish a reasonable belief that it knows the true identity of the customer. In addition to the risk factors described in paragraph (b)(2), the broker-dealer should take into account the problems of authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the broker-dealer knows the true identity of the customer, and may require the use of non-documentary methods in addition to documents.

Finally, with respect to the comments on ensuring the validity of documents, once a broker-dealer obtains and verifies the identity of a customer through a document, such as a driver's license or passport, the firm is not required to take steps to determine whether the document has been validly issued. A broker-dealer generally may rely on

[75] NPRM, Section II.D, 67 FR at 48309.

[76] *Id.*

[77] *Id.*

[78] Final rule, paragraph (b)(2)(ii).

[79] It is possible, however, that a broker-dealer would violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.,* 31 CFR Part 500 (regulations of Treasury's Office of Foreign Asset Control prohibiting transactions involving designated foreign countries or their nationals).

[80] Final rule, paragraph (b)(2)(ii).

[81] *See* NPRM, 67 FR at 48317.

[82] Final rule, paragraph (b)(ii)(A).

[83] *Id.* Other documents, such as the trust certificates and legal opinions suggested by one commenter, also may be appropriate for verification. The list in the rule is meant to be illustrative.

[84] For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. Final rule, paragraph (b)(2)(ii)(A)(*1*). For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument. Final rule, paragraph (b)(2)(ii)(A)(*2*).

government issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the broker-dealer must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Section 103.122(b)(2)(ii)(B) Customer Verification—Through Non-Documentary Methods

We proposed to require a broker-dealer's CIP to describe the non-documentary methods the broker-dealer would use to verify customers' identities and when the firm would use these methods in addition to, or instead of, relying on documents.[85] We explained that the proposed rule allowed the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet.[86] We also noted that, even if the customer presents identification documents, it might be appropriate to use non-documentary methods as well.[87]

The proposed rule provided examples of non-documentary verification methods that a broker-dealer may use, including: Contacting a customer; independently verifying information through credit bureaus, public databases, and other sources; and checking references with other financial institutions. In the NPRM, we observed that broker-dealers may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.[88]

We proposed to require broker-dealers to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the broker-dealer is presented with unfamiliar documents to verify the identity of a customer; or (3) the broker-dealer does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the broker-dealer will be unable to verify the true identity of a customer through documents.[89] In the NPRM, we explained that we recognize that identification documents may be obtained illegally and may be fraudulent.

In light of the recent increase in identity theft, we encouraged broker-dealers to use non-documentary methods even when the customer has provided identification documents.[90]

One commenter requested that we clarify that account applicants who are not physically present at an account opening may be treated under the broker-dealer's non-documentary verification methods.[91] One commenter sought clarification that a broker-dealer is not prohibited from using both documentary methods in conjunction with non-documentary methods.[92] One commenter suggested that public databases, such as the SEC's EDGAR system, should be considered a suitable source of non-documentary verification. One commenter expressed concern about the applicability of the Fair Credit Reporting Act (FCRA) when using non-documentary methods, such as credit reports.[93]

We recognize that there are many scenarios and combinations of risk factors that broker-dealers may encounter, and we have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity. Under the final rule, a broker-dealer relying on non-documentary verification methods must describe them in its CIP.[94] The final rule includes an illustrative list of methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database,[95] or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.[96] We continue to recommend that broker-dealers analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

The final rule also includes a list, similar to that in the proposed rule, of circumstances that may require the use of non-documentary procedures.[97] Specifically, non-documentary procedures must address circumstances in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the broker-dealer is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.[98]

As we stated in the NPRM, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, we encourage broker-dealers to use non-documentary methods even when the customer has provided identification documents.

Section 103.122(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described earlier, we originally proposed to require verification of the identity of any person authorized to effect transactions in a customer's account. Most commenters objected to this requirement, and it does not appear in the final rule. For the reasons discussed below, however, the rule does require that a broker-dealer's CIP address the circumstances in which it will obtain information about such individuals in order to verify a customer's identity.[99]

Treasury and the SEC believe that, while broker-dealers may be able to verify the majority of customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that the broker-dealer will not know the customer's true identity may be heightened for certain types of accounts, such as an account

[85] *See* NPRM, 67 FR at 48317.

[86] *See* NPRM, Section II.D.2, 67 FR at 48310.

[87] *Id.*

[88] *Id.*

[89] *See* NPRM, 67 FR at 48317.

[90] *See* NPRM, Section II.D.2, 67 FR at 48310.

[91] As discussed above, non-documentary methods may be used in any circumstance.

[92] *Id.*

[93] We have determined that there is no statutory basis to shield broker-dealers from FCRA requirements with respect to requirements under the final rule.

[94] Final rule, paragraph (b)(2)(ii)(B).

[95] We do not list the specific types of databases that would be suitable for verification. Thus, in response to the one comment, the SEC's EDGAR system may be an appropriate means of undertaking non-documentary verification. Ultimately, it will depend on the circumstances and the broker-dealer's assessment of the relevant risk factors.

[96] Final rule, paragraph (b)(2)(ii)(B)(*1*).

[97] Final rule, paragraph (b)(2)(ii)(B)(*2*).

[98] *Id.* The final clause acknowledges that there may be circumstances, beyond those specifically described in this provision, when a broker-dealer should use non-documentary verification procedures.

[99] *See* final rule, paragraph (b)(2)(ii)(C).

opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. We believe that a broker-dealer must identify customers that pose a heightened risk of not being properly identified and that a broker-dealer's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the customer when standard documentary or non-documentary methods prove to be insufficient.

The final rule, therefore, includes a new provision on verification procedures. This provision requires that the CIP address circumstances in which, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer also will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the account, in order to verify the customer's true identity.[100] This additional verification method applies only when the broker-dealer cannot adequately verify the customer's true identity using documentary and non-documentary verification methods.[101]

Section 103.122(b)(2)(iii) Lack of Verification

We proposed to require that a broker-dealer's CIP include procedures for responding to circumstances in which the firm cannot form a reasonable belief that it knows the true identity of the customer.[102] We explained in the NPRM that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional purchases.[103] We also explained that there should be guidelines for when an account will not be opened (*e.g.,* when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.[104]

We did not receive any comments on this aspect of the proposed rule and the final rule adopts the provision substantially as proposed.[105] However, it adds a description of recommended features of these procedures, based on the features described in the NPRM. Thus, the final rule states that the procedures should describe: (1) When the broker-dealer should not open an account; (2) the terms under which a customer may use an account while the broker-dealer attempts to verify the customer's identity; (3) when the broker-dealer should file a Suspicious Activity Report (SAR) in accordance with applicable law; and (4) when the broker-dealer should close an account, after attempts to verify a customer's identity have failed.[106]

Section 103.122(b)(3) Recordkeeping

Section 103.122(b)(3)(i) Required Records

We proposed to require broker-dealer CIPs to include certain recordkeeping procedures. [107] First, the proposed rule would have required that a broker-dealer maintain a record of the identifying information provided by customers. Second, if a broker-dealer relies on a document to verify a customer's identity, the proposed rule would have required the firm to maintain a copy of the document. Third, the proposed rule would have required broker-dealers to record the methods and results of any additional measures undertaken to verify the identity of customers. Finally, the proposed rule would have required broker-dealers to record the resolution of any discrepancy in the identifying information obtained.

Twelve commenters submitted comments on this aspect of the rule. Generally they objected to the requirement to maintain copies of verification documents or reports of non-documentary methods. They argued that this requirement was overly burdensome. Two commenters requested that the language in the proposed rule requiring broker-dealers to make copies that ''accurately depict'' the documentary records be harmonized with the CIP rules issued by the other Federal functional regulators.

We have reconsidered and modified the recordkeeping requirements of the rule. The final rule provides that a broker-dealer's CIP must include procedures for making and maintaining records related to verifying customers. However, the final rule is significantly more flexible than the proposed rule. Under the final rule, a broker-dealer must still make a record of the identifying information obtained about each customer.[108] However, rather than requiring copies of verification documents, the final rule requires that a broker-dealer's records include a *description* of any document that the broker-dealer relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any.[109] With respect to non-documentary verification, the final rule now requires the records to include ''a description'' of the methods and results of any measures undertaken to verify the identity of the customer.[110] The final rule also requires a record of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.[111]

As we stated in the NPRM, nothing in the rule modifies, limits, or supersedes Section 101 of the Electronic Signatures in Global and National Commerce Act.[112] A broker-dealer may use electronic records to satisfy the requirements of this final rule, in accordance with guidance that the Commission has issued.[113]

Section 103.122(b)(3)(ii) Record Retention

We proposed to require that a broker-dealer retain all required records for five years after the account is closed. Three commenters expressed concern about this aspect of the proposal, recommending that the recordkeeping period be shortened.

We believe that, by eliminating the requirement that a broker-dealer retain copies of documents used to verify customer identities, the final rule addresses many of the commenters' concerns. Nonetheless, while the identifying information provided by customers should be retained as proposed, there is little value in requiring broker-dealers to retain the remaining records for five years after an account is closed, because this information is likely to grow stale. Therefore, the final rule prescribes a

[100] *Id.*

[101] A broker-dealer need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's true identity after using standard documentary and non-documentary verification methods.

[102] *See* NPRM, 67 FR at 48317.

[103] *See* NPRM, Section II.G, 67 FR at 48310.

[104] *Id.*

[105] Final rule, paragraph (b)(2)(iii).

[106] *Id.*

[107] *See* NPRM, 67 FR at 48317.

[108] *See* final rule, paragraph (b)(3)(i)(A).

[109] Final rule, paragraph (b)(3)(i)(B).

[110] Final rule, paragraph (b)(3)(i)(C).

[111] Final rule, paragraph (b)(3)(i)(D). In response to one of the commenters, we limited this requirement to ''substantive'' discrepancies to make clear that records would not have to be made in the case of minor discrepancies, such as those that might be caused by typographical mistakes.

[112] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001).

[113] *See* Commission Guidance to Broker-dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f), Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

bifurcated record retention schedule that is consistent with a general five-year retention requirement.[114] Under the final rule, the broker-dealer must retain the information obtained about a customer pursuant to paragraph (b)(3)(i)(A) for five years after the date the account is closed.[115] The remaining records required under paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, information that verifies a customer's identity) need only be retained for five years after the record is made. The final rule provides that these records otherwise shall be maintained in accordance with the provisions of the broker-dealer recordkeeping rule (Rule 17a–4).[116]

Section 103.122(b)(4) Comparison With Government Lists

We proposed to require that a broker-dealer's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the broker-dealer.[117] In addition, the proposed rule stated that broker-dealers must follow all federal directives issued in connection with such lists.

Two commenters recommended that the final rule specify which government lists must be checked and provide a mechanism for communicating that information to broker-dealers. These commenters also suggested that all such lists be consolidated or provided through a clearinghouse, such as FinCEN. One commenter suggested that the rule should allow for the lists to be checked after an account is opened. Another commenter sought clarification that the requirement to check these lists only applied to the broker-dealer and not its affiliates.[118]

The final rule states that a broker-dealer's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.[119] Because Treasury and the federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that broker-dealers must check.[120] However, broker-dealers will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the federal government. Instead, they will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

We also have modified this provision to give guidance as to when a broker-dealer must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the broker-dealer to determine whether a customer appears on a list ''within a reasonable period of time'' after the account is opened, or earlier if required by another federal law or regulation or by a federal directive issued in connection with the applicable list.[121]

The final rule also requires a broker-dealer's CIP to include procedures that require the firm to follow all federal directives issued in connection with such lists.[122] Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.

Section 103.122(b)(5) Customer Notice

We proposed to require that a broker-dealer's CIP include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.[123] The NPRM stated that a broker-dealer could satisfy that notice requirement by generally notifying its customers about the firm's verification procedures.[124] It stated that if an account is opened electronically, such as through an Internet Web site, the broker-dealer could provide notice electronically.[125]

Four commenters requested model language for the notice. Two commenters suggested that the rule allow notice to be given within a reasonable time after the account is opened.

Section 326 of the Act provides that the regulations issued ''shall at a minimum, require financial institutions to * * * [give] customers * * * adequate notice'' of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires a broker-dealer's CIP to include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities. The final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule states that notice is adequate if the broker-dealer generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice before opening an account.[126] The final rule states that, depending on how an account is opened, a broker-dealer may post a notice in the lobby or on its website, or use any other form of oral or written notice, such as a statement on an account application.[127] In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a broker-dealer's customers when provided in accordance with the requirements of the final rule.[128]

Section 103.122(b)(6) Reliance on Other Financial Institutions

In the proposed rule, we included as a risk factor a broker-dealer's reliance on another broker-dealer.[129] In the NPRM, we stated that this requires an assessment of whether the broker-dealer can rely on another broker-dealer, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account.[130] We stated that a shared account means an account subject to a carrying or clearing agreement governed by New York Stock Exchange (NYSE) Rule 382 or National Association of Securities Dealers, Inc. (NASD) Rule 3230 (*i.e.*, a customer account introduced by a correspondent broker-dealer to a clearing and carrying broker-dealer).[131]

Six commenters submitted a variety of comments on this aspect of the proposed rule and the NPRM. Generally,

[114] *See* Final rule, paragraph (b)(3)(ii).

[115] The Secretary has determined that the records required to be retained under section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

[116] 17 CFR 240.17a–4.

[117] See NPRM, 67 FR at 48317.

[118] This rule only applies to ''broker-dealers'' as that term is defined in the rule. However, there may be cases where a broker-dealer's affiliate is subject to a CIP rule issued by Treasury and one of the other Federal functional regulators.

[119] Final rule, paragraph (b)(4).

[120] This is not to say, however, that broker-dealers do not have obligations under other laws to screen their customers against government lists. For example, broker-dealers already should have compliance programs in place to ensure they comply with Treasury's Office of Foreign Assets Control rules prohibiting transactions with certain foreign countries or their nationals. *See* OFAC's Foreign Assets Control Regulations for the Securities Industry, which can be viewed at the following Web site: *http://www.ustreas.gov/offices/enforcement/ofac/regulations/t11facsc.pdf.*

[121] Final rule, paragraph (b)(4).

[122] *Id.*

[123] *See* NPRM, 67 FR at 48317.

[124] NPRM, Section II.F, 67 FR at 48310.

[125] *Id.*

[126] Final rule, paragraph (b)(5)(ii).

[127] *Id.*

[128] Final rule, paragraph (b)(5)(iii).

[129] *See* NPRM, 67 FR at 48317.

[130] NPRM, Section II.B, 67 FR at 48307–48308.

[131] *Id.*

they all supported expanding the reliance provision beyond the confines of a clearing/introducing broker-dealer relationship. Some suggested allowing reliance in other broker-dealer relationships, such as that between a prime broker and an executing broker. Some also suggested permitting broker-dealers to rely on other types of entities, such as other financial institutions or affiliates. Two commenters also expressed concern with the degree of liability that remained with a broker-dealer relying on another broker-dealer.

We recognize that there may be circumstances in which a broker-dealer should be able to rely on the performance by another financial institution of some or all of the elements of the firm's CIP.[132] Therefore, the final rule provides that a broker-dealer's CIP may include procedures that specify when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the firm's CIP, and thereby satisfy the broker-dealer's obligations under the rule.[133] Reliance is permitted if a customer of the broker-dealer is opening, or has opened, an account or has established a similar relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a broker-dealer to rely on the other financial institution, (1) such reliance must be reasonable under the circumstances, (2) the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a federal functional regulator, and (3) the other financial institution must enter into a contract with the broker-dealer requiring it to certify annually to the broker-dealer that it has implemented an anti-money laundering program and will perform (or its agent will perform) the specified requirements of the broker-dealer's CIP. The contract and certification will provide a standard means for a broker-dealer to demonstrate the extent to which it is relying on another financial institution to perform its CIP, and that the other institution has, in fact, agreed to perform those functions.[134] If it is not clear from these documents, a broker-dealer must be able to otherwise demonstrate when it is relying on another financial institution to perform its CIP with respect to a particular customer. The broker-dealer will not be held responsible for the failure of the other financial institution to fulfill adequately the broker-dealer's CIP responsibilities, provided that the broker-dealer can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the SEC emphasize that the broker-dealer and the other financial institution upon which it relies must satisfy all of the conditions set forth in this final rule. If they do not, then the broker-dealer remains solely responsible for applying its own CIP to each customer in accordance with this rule.

All of the federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the federal functional regulators expect to share information and cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the reliance provision of this rule.

Section 103.122(c) Exemptions

The proposed rule provided that the Commission, with the concurrence of the Secretary, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o and 78o–4.[135] However, it excluded from this exemptive authority broker-dealers that register pursuant to 15 U.S.C. 78o(b)(11). These are firms that register as broker-dealers solely because they deal in securities futures products. The exemptive authority with respect to these firms will be in the rule issued jointly by Treasury and the CFTC. The proposed rule provided that the Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers pursuant to 15 U.S.C 78o–5 (*i.e.*, government securities dealers).

We received no comments on this provision in the proposed rule and are adopting it substantially as proposed.[136]

Section 103.122(d) Other Requirements Unaffected

The final rule includes a provision, parallel to that in CIP rules adopted by the other Federal functional regulators, to the effect that nothing in the rule shall be construed to relieve a broker-dealer of its obligations to obtain, verify, or maintain information that is required by another regulation in Part 103.[137] In addition, broker-dealers continue to be subject to existing securities law requirements, which may have different or more rigorous requirements than those in the final rule.[138]

B. Requirement for CIP Approval Removed

The proposed rule had a requirement in paragraph (i) that the CIP be approved by the broker-dealer's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the CIP.[139] The final rule requires the CIP to be a part of the overall AML programs required of broker-dealers under NASD Rule 3011 and NYSE Rule 445.[140] NASD Rule 3011 and NYSE Rule 445 require the AML programs to be approved in writing by a member of the broker-dealer's senior management. We removed the approval requirement in the final rule because it was unnecessary given the approval requirements in NASD Rule 3011 and NYSE Rule 445. We note, however, that a broker-dealer with an AML program that has been approved as required, must nonetheless obtain approval of a new CIP because it would be a material change to the AML program.

III. Conforming Amendments to 31 CFR 103.35

As Treasury explained in the NPRM, current section 103.35(a) sets forth customer identification requirements when certain brokerage accounts are opened. Together with the proposed rule implementing section 326 of the Act, Treasury, on its own authority, proposed deleting 31 CFR 103.35(a) for the following reasons.

Generally, sections 103.35(a)(1) and (2) require a broker-dealer, within 30

[132] This provision of the rule does not affect the ability of a broker-dealer to contractually delegate the implementation and operation of its CIP to a service provider that would not qualify under the reliance provisions of paragraph (b)(6). However, in such a case, the broker-dealer remains solely responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.

[133] Final rule, paragraph (b)(6).

[134] A broker-dealer must be able to demonstrate that the other financial institution has agreed to perform the relevant requirements of the broker-dealer's CIP, regardless of whether the other financial institution is an affiliate or a non-affiliate. Accordingly, the contract and certification requirement in the final rule applies equally to affiliate and non-affiliate reliance.

[135] *See* NPRM, 67 FR at 48317.

[136] Final rule, paragraph (c). The reference to firms that register under 15 U.S.C. 78o(b)(11) has been removed since these firms are excluded from the rule's definition of broker-dealer.

[137] Final rule, paragraph (d).

[138] For example, Rule 17a–3(a)(9) requires broker-dealers to obtain the name and address of the beneficial owners of certain accounts and NASD Rule 3110, among other things, requires broker-dealers to obtain the names of persons authorized to transact business on behalf of customers that are legal entities.

[139] *See* NPRM, 67 FR at 48317.

[140] *See* final rule, paragraph (b)(1).

days after an account is opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the broker-dealer is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.35 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the broker-dealer is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in the proposed CIP rule, which required broker-dealers to obtain the name, address, date of birth and an identification number from any person opening a new account.

Section 103.35(a)(3) currently provides that a broker-dealer need not obtain a taxpayer identification number with respect to specified categories of persons [141] opening accounts. The proposed rule did not exempt any persons from the CIP requirements. As stated in the NPRM, Treasury believes that the requirements of section 103.35(a) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with the proposed rule.

For these reasons, Treasury, under its own authority, proposed deleting the above referenced provisions in 103.35(a). Treasury and the Commission requested comments on whether any of the exemptions in Section 103.35(a)(3) should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act. The comments we received requesting exemptions from the CIP requirements have been discussed above in the section-by-section analysis of the final rule.

Treasury has determined that given the more comprehensive requirements of the final CIP rule, there is no longer a need for § 103.35 (a). A number of the exemptions formerly in § 103.35(a) have now been added to the final CIP rule. Other exemptions conflict with the language and intent of section 326 of the Act and thus are not adopted in the final rule. While 103.35(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which broker-dealers would not be subject to a rule under the BSA requiring customers to be identified when opening brokerage accounts. Because Treasury and the Commission do not believe such a gap period would be appropriate, the final rule—rather than withdrawing 103.35(a)—amends the section to cut off its applicability on October 1, 2003, when 103.122 becomes fully effective.

IV. Paperwork Reduction Act

The new rule has certain provisions that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Treasury submitted the proposed rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C 3507(d) and 5 CFR 1320.11. 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 control number. The OMB has approved the collection of information requirements in today's rule under control number 1506–0034.

A. Collection of Information Under the Proposed Rule

The final rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. In summary, the final rule, like the proposed rule, requires broker-dealers to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of the CIP procedures to customers. These recordkeeping and notice requirements are required under section 326 of the Act. However, the final rule reduces the paperwork burden attributable to these requirements, as described below.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the broker-dealer. Furthermore, section 326 provides that the regulations, at a minimum, must require broker-dealers to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The final rule requires each broker-dealer to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the broker-dealer is requesting information to verify their identity. The final rule requires a broker-dealer to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, and the identification number of the document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained.

The final rule also requires each broker-dealer to give customers ''adequate notice'' of the identity verification procedures. Depending on how an account is opened, a broker-dealer may satisfy this disclosure requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the broker-dealer may provide the notice electronically. Accordingly, a broker-dealer may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

[141] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iii) aliens who are accredited representatives of certain international organizations, and their immediate families; (iv) aliens temporarily residing in the United States for a period not to exceed 180 days; (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; and (vi) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter.

C. Respondents

The final rule will apply to approximately 5,448 broker-dealers, which is the approximate number of firms that conduct business with the general public.[142]

D. Total Annual Reporting and Recordkeeping Burden

1. Providing Notice to Customers

The requirement to provide notice to customers generally will be a one-time burden in terms of drafting and posting or implementing the notices. The Commission estimates that broker-dealers will take two hours each to draft and post the required notices. There are approximately 5,448 broker-dealers that will have to undertake this task. Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 10,896 hours.

2. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual time burden. The total burden to the industry will depend on the number of new accounts added each year. The Commission estimates that broker-dealers, on average, will spend two minutes per account making and maintaining the required records.[143] Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 140,833 hours in 2003, 620,000 hours in 2004 and 683,833 hours in 2005.[144]

We believe that there is a nominal burden associated with the new recordkeeping requirement. Under the final rule, a broker-dealer may rely on another financial institution to perform some or all its CIP under certain conditions, including that the financial institution must enter into a contract requiring the financial institution to certify annually to the broker-dealer that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified elements of the broker-dealer's CIP. Not all broker-dealers will choose to rely on a third party. The minimal burden of retaining the certification described above should allow a broker-dealer to reduce its net burden under the rule by relying on another financial institution to perform some or all of its CIP.

3. Request for Comment

Treasury and the Commission invite comments on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments 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 (1506–0034), 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.

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the proposed rule would be provided by customers and other sources to broker-dealers and maintained by broker-dealers. In addition, the information may be used by federal regulators, self-regulatory organizations, and authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The final rule requires that the documentation of the identifying information obtained from the customer be retained until five years after the date the account of the customer is closed and that the other records relating to the verification of the customer be retained until five years after the record is made.

V. SEC's Analysis of the Costs and Benefits Associated With the Final Rule

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for broker-dealers regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The final rule implements this statutory mandate by requiring broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify the identifying information; (4) check customers against lists provided by federal agencies, (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records. The Commission believes that these requirements are reasonable and practicable, as required by the section 326 and, therefore, that the costs associated with them are attributable to the statute. Moreover, while the final rule specifies certain minimum requirements, broker-dealers are able to design their CIPs in a manner most appropriate to their business models and customer bases. This flexibility should be beneficial to broker-dealers in helping them to tailor their CIPs appropriately, while still meeting the statutory requirements of section 326.

Even though the Commission believes the costs associated with the final rule are attributable to the statute, it considered preliminarily the costs and benefits associated with the proposed rule and requested comment on all aspects of its cost-benefit analysis.[145] The Commission sought comment on all aspects of the rule, including whether the establishment of minimum requirements creates a benefit or, conversely, imposes costs because broker-dealers will not be able to choose for themselves the minimum procedures they wish to use to meet the requirements of the statute. The Commission also sought comment on whether the costs are attributable to the statute. Most commenters did not address the Commission's cost-benefits

[142] This figure is derived from financial information filed by broker-dealers on Form X–17a–5—Financial and Operational Combined Uniform Single (FOCUS) Reports—pursuant to section 17 of the Exchange Act and rule 17a–5 (17 CFR 240.17a–5).

[143] The Commission estimates that the number of new accounts per year will be: 16,900,000 in 2003, 18,600,000 in 2004, and 20,515,000 in 2005. The Commission arrived at this estimate by considering: (1) The total number of accounts at the 2001 year-end (102,700,000) as reported by broker-dealers on their FOCUS Reports; and (2) the annualized growth rate in total accounts for the years 1990 through 2001 (ten percent). The Commission also estimates that the number of accounts that are closed each year equals five percent of the total number of accounts. Accordingly, the Commission estimates that the total annualized growth rate for new accounts each year is fifteen percent. Therefore, starting with the 2001 total of 102,700,000 and using an annualized growth rate of fifteen percent, the Commission estimates that 16,900,000 new accounts will be added in 2003, 18,600,000 in 2004 and 20,515,000 in 2005.

[144] The Commission derived these estimates by taking the number of new accounts projected for each upcoming year and multiplying the number by two minutes and then dividing that number by 60 to convert minute totals into hour totals. The final rule will be effective only for the last quarter of 2003. Therefore, while the total burden for a twelve-month effective period would be 563,333 hours, the actual burden being allocated to the rule is 140,833 (or ¼ of 563,333).

[145] NPRM, Section VI, 67 FR at 48313.

analysis. The commenters that did discuss costs stated generally that they believed the Commission had underestimated them.

In light of the comments, the Commission re-examined its analysis, obtained further cost information and adjusted its cost estimate with respect to the one-time costs associated with implementing a CIP. The adjustment is reflected in the cost section below titled ''Implementing the CIP.'' The Commission also adjusted certain of the burden totals to reflect updated figures (*e.g.*, number broker-dealers doing a public business) obtained from more recent broker-dealer FOCUS reports. As discussed throughout this release, the burdens that would have been imposed by the proposed rule have been lessened as a result of changes to the final rule including (1) the narrowing of the definitions of ''account'' and ''customer,'' (2) the elimination of need to make and retain certain records, and (3) the expansion of the reliance provision. The estimates below take these changes into account.

A. Benefits Associated With the Final Rule

The anti-money laundering provisions in the Act are intended to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The final rule is an important part of this effort. It fulfills the statutory mandate of section 326 by specifying how a broker-dealer is to establish a program that will assist it in determining the identities of customers. Verifying identities, in turn, will reduce the risk of broker-dealers unwittingly aiding criminals, including terrorists, in accessing U.S. financial markets to launder money or move funds for illicit purposes. Additionally, the implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft or the placing of fictitious orders to buy or sell securities.

B. Costs Associated With the Final Rule

1. Implementing a CIP

Most broker-dealers, as a matter of prudent business practices, already should have procedures in place for verifying identities of customers. In addition, Exchange Act Rule 17a–3(a)(9) requires broker-dealers to obtain the name and address of each beneficial owner of a cash or margin account.[146] Similarly, the self-regulatory organizations have rules requiring broker-dealers to obtain identifying information from customers.[147] Accordingly, firms should have written procedures for complying with these existing regulations.

Nonetheless, the Commission believes that some broker-dealers will have to update or establish a CIP. The proposed rule seeks to keep costs low by allowing for great flexibility in establishing a CIP. For example, the CIP should be based on factors specific to each broker-dealer, such as size, customer base and location. Thus, the analysis and detail necessary for a CIP will depend on the complexity of the broker-dealer and its operations. Given the considerable differences among broker-dealers, it is difficult to quantify a cost per broker-dealer. Highly complex firms will have more risk factors to consider, given, for example, their size, multiple offices, variety of services and products offered, and range of customers. However, most large firms already have some procedures in place for verifying customer identities. Smaller and less complex firms will not have as many risk factors.

The Commission estimates that establishing a written CIP could result in additional costs for some broker-dealers to the extent they do not have verification procedures that meet the minimum requirements in the rule. This includes broker-dealers that would need to augment their procedures to make them compliant. On average, the Commission estimates the additional cost per broker-dealer to draft CIP procedures to be approximately $2,244, resulting in a one time overall cost to the industry of approximately $12,225,312.[148]

Previously, the Commission included, as part of the costs of establishing a CIP, a cost estimate associated with updating account opening applications or account opening websites. This was estimated as a one-time cost to the industry of $563,760.[149] Several commenters stated that they believed the Commission had underestimated the burden of establishing a CIP. One commenter also identified steps that would need to be taken in addition to updating applications and websites. Accordingly, the Commission is now adjusting its estimate of the costs associated with revising or designing forms and other documentation (including applications and Web sites), and including costs associated with programming and testing automated systems. The Commission estimates the one-time costs associated with modifying account application materials to be $8,274,150.[150] Further, the Commission estimates the one-time costs associated with programming and testing automated systems to be $25,505,536.[151]

2. Obtaining Identifying Information

The Commission believes that broker-dealers already obtain from customers most, if not all, of the information required under the final rule.[152] Rule

[146] 17 CFR 240.17a–3(a)(9).

[147] *See, e.g.*, NYSE Rule 405, NASD Rule 3110.

[148] The Commission estimates that it will take broker-dealers on average approximately 20 hours to draft a CIP. This estimate seeks to account for the fact that many firms already have customer identification and verification procedures and that discrepancies in size and complexity will result in differing time burdens. The Commission believes that broker-dealers will have senior compliance personnel draft their CIPs and that this will take an average of 16 hours. The Commission anticipates that in-house counsel will spend on average 4 hours reviewing the CIP. According to the Securities Industry Association (''SIA'') *Management and Professional Earnings 2000* report (''SIA Earnings Report''), Table 051, the hourly cost of a compliance manager plus 35% overhead is $101.25. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107 (Attorney)). Therefore, the Commission estimates that the total cost per broker-dealer to establish a CIP would be $2,244 per broker-dealer [(16 × $101.25) + (4 × $156.00)]. As of September 30, 2002, there were approximately 5,448 broker-dealers that engaged in some form of a public business. Therefore, the Commission estimates that the total cost to the industry would be $2,244 multiplied by 5,448 or $12,225,312.

[149] The Commission estimated that it would take each broker-dealer, on average, one hour to update account opening applications or electronic account opening systems. The Commission believed broker-dealers would have a compliance manager implement the necessary changes. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry was estimated to be: ($101.25) × (the number of broker-dealers doing a public business or 5,568) or $563,760.

[150] The Commission estimates that it will take each broker-dealer, on average, fifteen hours to modify account opening documentation or electronic account opening systems. The Commission believes broker-dealers will have a compliance manager implement the necessary changes. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry was estimated to be: ($101.25) × (15 hours) × (the number of broker-dealers doing a public business—5,448) or $8,274,150.

[151] The Commission estimates that it will take broker-dealers on average approximately 640 hours to program and test the automated systems that will need to be changed to comply with the rule. The Commission estimates computer programmers will do this work. The hourly cost of a computer programmer is $66.20 (SIA Earnings Report, Table 158 (Senior Programmer)). The Commission estimates that generally systems changes will need to be made only by broker-dealers that carry or clear customer accounts. FOCUS report data indicates that there are approximately 602 such broker-dealers. Accordingly, the total cost to the industry is estimated to be ($66.20) × (640 hours) × (602 broker-dealers) or $25,505,536.

[152] For example, the Anti-Money Laundering Committee of the SIA recommended in its *Preliminary Guidance for Deterring Money Laundering Activity* (February 2002) that broker-

17a–3(a)(9) requires broker-dealers to obtain, with respect to each margin and cash account, the name and address of each beneficial owner, provided that the broker-dealer need only obtain such information from the persons authorized to transact business for the account if it is a joint or corporation account.[153]

Further, broker-dealers are already required, pursuant to NASD Rule 3110, to obtain certain identifying information with respect to each account.[154] For example, if the customer is a natural person, the rule requires the broker-dealer to obtain the customer's name and address.[155] In addition, the broker-dealer must determine whether the customer is of legal age, and, if the customer purchases more than just open-end investment company shares or is solicited to purchase such shares, the broker-dealer must obtain the customer's tax identification or social security number.[156] If the customer is a corporation, partnership, or other legal entity, the broker-dealer must obtain its name, residence, and the names of any persons authorized to transact business on behalf of the entity.[157] If the account is a discretionary account, the broker-dealer must obtain the signature of each person authorized to exercise discretion over the account.[158] Finally, the broker-dealer must maintain all of this information as a record of the firm.

In addition, NYSE Rule 405 requires broker-dealers to ''[u]se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization.'' [159]

While broker-dealers currently are required to obtain most of this information, the Commission estimates that there will be some new costs for broker-dealers because some may not be obtaining all the required information. The Commission estimates that the total cost to the industry to obtain the minimum identifying information will be $1,598,458 in 2003, $7,037,000 in 2004 and $7,761,508 in 2005.[160]

3. Verifying Identifying Information

The final rule gives broker-dealers substantial flexibility in establishing how they will independently verify the information obtained from customers. For example, customers that open accounts on a broker-dealer's premises can provide a driver's license or passport, or if the customer is not a natural person, it can provide a copy of any documents showing its existence as a legal entity (*e.g.*, articles of incorporation, business licenses, partnership agreements or trust instruments). There are also a number of options for customers opening accounts via the telephone or Internet. In these cases, broker-dealers may obtain a financial statement from the customer, check the customer's name against a credit bureau or database, or check the customer's references with other financial institutions.

The documentary and non-documentary verification methods set forth in the rule are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible is to allow broker-dealers to select verification methods that are, as section 326 requires, reasonable and practicable. Methods that are appropriate for a smaller broker-dealer with a fairly localized customer base may not be sufficient for a larger firm with customers from many different countries. The proposed rule recognizes this fact and, therefore, allows broker-dealers to employ such verification methods as would be suitable for a given firm to form a reasonable belief that it knows the true identities of its customers.

The Commission estimates identity verification could result in costs for broker-dealers because some firms currently may not use verification methods. The Commission estimates that the total cost to the industry to verify the identifying information will be $13,343,958 in 2003, $58,745,000 in 2004 and $64,793,208 in 2005.[161]

4. Determining Whether Customers Appear on a Federal Government List

The Commission believes that broker-dealers that receive federal government lists, chiefly clearing firms, already have procedures for checking customers against them. First, there are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control of the U.S. Treasury (OFAC). The failure of a firm to comply with these requirements could result in criminal and civil penalties. The Commission believes that, given the events of September 11, 2001, most broker-dealers that receive lists from the federal government have implemented procedures for checking their customers against them.

The Commission estimates that this requirement could result in some additional costs for broker-dealers because some may not already check such lists. The Commission estimates

dealers obtain certain identifying information from customers at the commencement of the business relationship, including, for natural persons: name, address, date of birth, investment experience and objectives, social security number or taxpayer identification number, net worth, annual income, occupation, employer's address, and the names of any persons authorized to effect transactions in the account. For non-resident aliens, the SIA Committee recommended that the broker-dealer obtain, in addition to the information above, a passport number or other valid government identification number. The SIA Committee also made a number of recommendations with respect to customers that are not natural persons.

[153] 17 CFR 240.17a–3(a)(9).

[154] Section 15(b)(8) of the Exchange Act (15 U.S.C. 78o(b)(8)) requires each broker-dealer to become a member of a securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) unless the broker-dealer effects transactions solely on a national securities exchange of which it is a member. The NASD is the only securities association registered pursuant to section 15A. Exchange Act Rule 15b9–1 (17 CFR 240.15b9–1) exempts broker-dealers from this requirement to register with the NASD if they (1) are an exchange member, (2) carry no customer accounts, and (3) derive gross annual income from purchases and sales of securities other than on a national securities exchange of not greater than $1,000. Generally then, most broker-dealers that carry customer accounts are members of the NASD and subject to Rule 3110.

[155] NASD Rule 3110(c)(1).

[156] NASD Rule 3110(c)(2).

[157] NASD Rule 3110(c)(1).

[158] NASD Rule 3110(c)(3).

[159] NYSE Rule 405(1).

[160] The Commission estimates that obtaining the required minimum identifying information will take broker-dealers approximately one minute per account. This takes into consideration the fact that approximately 97% of customer accounts are held at the 70 largest broker-dealers. These firms likely already obtain the required identifying information from their customers. Therefore, requiring that each piece of identifying information be obtained should not impose a significant additional burden. The average hourly cost of the person who would be obtaining this information is $22.70 per hour (per the SIA Earnings Report, Table 082 (Retail Sales Assistant, Registered) and including 35% in overhead charges). Therefore, the costs to the industry would be: (number of new accounts per year) × (1/60 of an hour) × ($22.70). As indicated previously, the Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $6,393,833, the actual cost being allocated to the rule for 2003 is $1,598,458 (or ¼ of $6,393,833).

[161] The Commission estimates that the processing costs associated with verification methods will be approximately $1.00 per account. The Commission further estimates that the average time spent verifying an account will be five minutes. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × ($1.00) + (number of new accounts per year) × (1/12 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $53,375,833, the actual cost being allocated to the rule for 2003 is $13,343,958 (or ¼ of $53,375,833).

that the total cost to the industry to check such lists will be $911,896 in 2003, $4,014,500 in 2004 and $4,427,820 in 2005.[162]

5. Providing Notice to Customers

A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. Depending on how accounts are opened, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. The Commission estimates the total one-time cost to the industry to implement adequate notices will be $1,401,498.[163]

6. Recordkeeping

The Commission estimates that many of the records required by the rule are already made and maintained by broker-dealers. As discussed above, Commission and self-regulatory organization rules already require broker-dealers to obtain much of the minimum identifying information specified in the proposed rule. These regulations also require that records be made and kept of this information. Moreover, the final rule has modified the recordkeeping requirements to make them less burdensome. The Commission estimates that the recordkeeping requirement could result in additional costs for some broker-dealers that currently do not maintain certain of the records for the prescribed time period. The Commission estimates that the total cost to the industry to make and maintain the required records in the upcoming years will be $3,647,583 in 2003, $16,058,000 in 2004 and $17,711,283 in 2005.[164]

VI. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* to address concerns related to the effects of agency rules on small entities. In the NPRM, Treasury and the Commission stated that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities.'' [165] 5 U.S.C. 605(b). First, we noted that the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, we pointed out that the economic impact on broker-dealers, including small entities, is imposed by the statute itself, and not by the final rule.

While Treasury and the Commission believed that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, Treasury and the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) that was published in the NPRM. Therefore, a Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with 5 U.S.C. 604.

A. Need for and Objectives of the Rule

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the broker-dealer. Furthermore, section 326 requires, at a minimum, that broker-dealers implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The rule seeks to achieve the goals of section 326 by specifying the information broker-dealers must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with broker-dealers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

B. Significant Issues Raised by Public Comment

In the NPRM, Treasury and the Commission specifically requested public comments on any aspect of the IRFA, as well as the number of small entities that may be affected by the proposed rule. The agencies received no comments on the IRFA.

C. Small Entities Subject to the Rule

The final rule will affect broker-dealers that are small entities. Rule 0–

[162] The Commission believes that most of the firms that receive these lists already check their customers against them. Moreover, as indicated previously, 97% of customer accounts are held at the 70 largest firms. The Commission understands that most of these firms have automated processes for complying with many regulatory requirements. Accordingly, the Commission estimates that it will take broker-dealers on average thirty seconds to check whether a person appears on a government list. The hourly cost of the person who would check the list is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/120 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $3,647,583, the actual cost being allocated to the rule for 2003 is $911,896 (or ¼ of $3,647,583).

[163] The Commission estimates that it will take each broker-dealer, on average, two hours to create and implement the appropriate notice. This estimate takes into consideration the fact that many small firms will be able to provide adequate notice by hanging signs in their premises. Larger firms will be able to provide notice by updating account opening documentation or electronic account opening systems. The Commission believes that broker-dealers will have an attorney draft the appropriate notice, and that this will take approximately one hour. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107, (Attorney)). The Commission believes that broker-dealers will have a compliance manager implement the notice, and that implementation will take approximately one hour. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: ($156.00 + 101.25) × (the number of broker-dealers doing a public business or 5,448) or $1,401,498.

[164] The Commission estimates that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that many broker-dealers already make and maintain many of the required records and that the requirements in the final rule have been modified. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/30 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $14,590,333, the actual cost being allocated to the rule for 2003 is $3,647,583 (or ¼ of $14,590,333).

[165] NPRM, Section VII, 67 FR at 48315.

10 under the Exchange Act [166] defines a broker-dealer to be small if it (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in the rule.

The Commission estimates there are approximately 878 broker-dealers that were ''small'' for purposes of Rule 0–10 that would be subject to this rule because they conduct business with the general public. The Commission bases its estimate on the information provided in broker-dealer FOCUS Reports.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule would require broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP.

As noted above, the rule is not expected to have a significant economic impact on a substantial number of small entities. Commission staff estimates that broker-dealers needing to draft a CIP will spend, on average, approximately 20 hours, at a cost of approximately $2,244 per firm, and that broker-dealers needing to make systems modifications will spend, on average, approximately 640 hours at a cost of $39,864.44 per firm.

Although small entities will also incur annual costs, the Commission expects that they will not have a significant economic impact. For each new account, a broker-dealer will require what we estimate to be one minute for collecting customer information, 5 minutes for verifying customer information, half a minute for comparison to government lists, and 2 minutes for record retention, each at a cost of approximately $22 to $26 per hour. Small entities are likely to have a relatively small number of accounts; therefore, they will incur the ongoing costs of individual customer identifications relatively infrequently.

E. Agency Action To Minimize Effect on Small Entities

Treasury and the Commission considered significant alternatives to the amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption for small broker-dealers from coverage of the proposed amendments or any part thereof.

The final rule provides for substantial flexibility in how each broker-dealer may meet its requirements. This flexibility is designed to account for differences between broker-dealers, including size. Nonetheless, Treasury and the Commission did consider alternatives indicated above. Treasury and the Commission believe that the alternative approaches to minimize the adverse impact of the rule on small entities are not consistent with the statutory mandate of section 326. In addition, Treasury and the Commission do not believe that an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of broker-dealers, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

VII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

[166] 17 CFR 240.0–10(c).

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues 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, 326, 352, Pub. L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

§ 103.35 [Amended]

■ 2. In § 103.35, amend the first sentence of paragraph (a)(1) to add the words ''and before October 1, 2003'' after the words ''June 30, 1972''.

■ 3. Subpart I of part 103 is amended by adding § 103.122 to read as follows:

§ 103.122 Customer identification programs for broker-dealers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(ii) *Account* does not include:

(A) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C 77a *et seq.*), except persons who register pursuant to 15 U.S.C 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4)(i) *Customer* means: (A) A person that opens a new account; and (B) an individual who opens a new account for: (*1*) An individual who lacks legal capacity; or (*2*) an entity that is not a legal person.

(ii) *Customer* does not include: (A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator; (B) a person described in § 103.22(d)(2)(ii) through (iv); or (C) a person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(5) *Federal functional regulator* is defined at § 103.120(a)(2).

(6) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.,* social security number or employer identification number).

(8) *U.S. person* means: (i) A United States citizen; or (ii) a person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(9) *Non-U.S. person* means a person that is not a *U.S. person.*

(b) *Customer identification program: minimum requirements.*

(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (''CIP'') appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of the broker-dealer's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i)(A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be: (*i*) For an individual, a residential or business street address; (*ii*) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or (*iii*) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be: (*i*) For a U.S. person, a taxpayer identification number; or (*ii*) for a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a

customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a–4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a broker-dealer may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o–4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o–5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

By the Financial Crimes Enforcement Network.

James F. Sloan,

Director.

Dated: April 29, 2003.

In concurrence: By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26031; File No. S7–26–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA33

Customer Identification Programs for Mutual Funds

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the Act). Section 326 requires the Secretary

of the Treasury (the Secretary or Treasury) to jointly prescribe with the Securities and Exchange Commission (the Commission or SEC) a regulation that, at a minimum, requires investment companies to implement procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person's identity; and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency. This final regulation applies to investment companies that are mutual funds.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Each mutual fund must comply with this final rule by October 1, 2003. Section I.D. of the **SUPPLEMENTARY INFORMATION** contains additional information concerning the compliance date for the final rule.

FOR FURTHER INFORMATION CONTACT:

Securities and Exchange Commission: Division of Investment Management, Office of Regulatory Policy at (202) 942–0690.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905–3590; Office of the General Counsel (Treasury) at (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622–0480.

SUPPLEMENTARY INFORMATION: Treasury and the Commission are jointly adopting (1) a new final rule, 31 CFR 103.131, proposed in July 2002,[1] to implement section 326 of the USA PATRIOT Act[2] and (2) a new rule 0–11 [17 CFR 270.0–11] under the Investment Company Act of 1940[3] (the ''1940 Act'') that cross-references this new final rule.

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act. Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA).[4] These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations ''setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.''

Section 326 applies to all ''financial institutions.'' This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.[5] Although ''investment companies'' are ''financial institutions'' for purposes of the BSA,[6] the BSA does not define ''investment company.''[7] The 1940 Act defines the term broadly and subjects investment companies to comprehensive regulation by the SEC.[8] This final rule applies only to those investment companies that are ''open-end companies'' required to register with the SEC under section 8 of the 1940 Act.[9] These entities are commonly referred to as ''mutual funds.''

The regulations implementing section 326 must require, at a minimum, financial institutions, including investment companies, to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

Final rules governing the applicability of section 326 to other financial institutions, including broker-dealers, banks, thrifts, credit unions, and futures commission merchants, are being issued separately.[10] Treasury, the SEC, the CFTC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. These participating agencies intend the effect of the final rules to be uniform throughout the financial services industry.

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[1] Customer Identification Programs for Mutual Funds, 67 FR 48318 (July 23, 2002) (proposed rule).

[2] Pub. L. 107–56.

[3] 15 U.S.C. 80a–1.

[4] 31 U.S.C. 5311 *et seq.*

[5] *See* 31 U.S.C. 5312(a)(2) and (c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the banking agencies), the SEC, and the Commodity Futures Trading Commission (CFTC).

[6] *See* 31 U.S.C. 5312(a)(2)(I).

[7] Treasury has not yet adopted rules defining ''investment company'' for purposes of the BSA. By interim rule published on April 29, 2002, Treasury required that certain ''open-end companies,'' as that term is defined in the 1940 Act (mutual funds) adopt anti-money laundering programs pursuant to section 352 of the Act. 67 FR 21117 (Apr. 29, 2002). Treasury temporarily exempted investment companies other than mutual funds from the requirement that they establish anti-money laundering programs and temporarily deferred determining the definition of ''investment company'' for purposes of the BSA. *Id.* On September 26, 2002, Treasury issued a rule proposal that, if adopted, would require certain ''unregistered investment companies'' to adopt and implement anti-money laundering programs. 67 FR 60617 (Sept. 26, 2002). Treasury has also submitted, jointly with the SEC and the Board of Governors of the Federal Reserve System, a report to Congress recommending that customer identification requirements be applied to unregistered investment companies. *See* A Report to Congress in Accordance with § 356(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (December 31, 2002) at 38 (available at *www.treasury.gov/press/releases/reports/356report.pdf*). We anticipate that this recommendation will be addressed by separate rulemaking.

[8] Section 3(a)(1) of the 1940 Act defines ''investment company'' as any issuer that (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[9] *See* § 103.131(a)(8). Section 5(a)(1) of the 1940 Act defines ''open-end company.'' Other types of investment companies regulated by the SEC include closed-end companies and unit investment trusts. The Secretary and the SEC will continue to consider whether a CIP requirement would be appropriate for the issuers of these products, or whether they are effectively covered by the CIP requirements of other financial institutions involved in their distribution (*e.g.*, broker-dealers).

[10] Treasury intends to issue separate rules under section 326 for non-bank financial institutions that are not regulated by the federal functional regulators.

B. Overview of Comments Received

On July 23, 2002, Treasury and the SEC jointly proposed a rule to implement section 326 with respect to mutual funds.[11] Treasury and the SEC proposed general standards that would require each mutual fund to design and implement a customer identification program (CIP) tailored to the mutual fund's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all mutual funds.

Treasury and the SEC received eight comments in response to the proposal.[12] Commenters included investment companies, a financial services holding company, a registered investment adviser, a transfer agent, trade associations, and a company engaged in the sale of technologies and services used to locate persons and authenticate identities. Commenters generally supported the proposal but suggested revisions.

Two commenters agreed with the largely risk-based approach set forth in the proposal, which allows each mutual fund to develop a CIP based on its specific operations, taking into consideration variables such as size and type of business. Five commenters suggested that the final rule make greater use of a risk-based approach, in lieu of specific identification and verification requirements. They suggested that such a comprehensively risk-based approach would give mutual funds appropriate discretion to focus efforts and resources on the high-risk accounts that are most likely to be used by money launderers and terrorists. All of the commenters recommended that the final rule include more specific requirements addressing the risks presented by particular situations.[13] Seven of the eight commenters suggested that we had underestimated the burdens that would be imposed by certain elements of the proposal. Three commenters suggested that mutual funds be given greater flexibility when dealing with established customers and be permitted to rely on identification and verification of customers performed by third parties, including other funds in the same fund complex.

All of the commenters asked for additional guidance concerning one or more elements of the proposed rule. Six commenters requested guidance regarding the requirement to check government lists of known and suspected terrorists and terrorist organizations. Four commenters requested guidance concerning the proposal to require notice to customers that the mutual fund is requesting information to verify the customer's identity. Seven commenters requested that the final rule contain a delayed implementation date in order to provide mutual funds with sufficient time to design CIPs, obtain board approval, alter existing policies and procedures, forms, and software, and train staff.

We have modified the proposed rule in light of these comments. The section-by-section analysis that follows discusses the comments and the modifications that we have made to the rule.

C. Codification of the Joint Final Rule

The final rule is being issued jointly by Treasury, through FinCEN, and by the SEC. The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR Part 103. In addition, to provide a reference to the joint final rule in the SEC regulations for investment companies, the SEC is concurrently publishing a provision in its own regulations in 17 CFR Part 270 that cross-references this final rule.[14]

D. Compliance Date

Six commenters requested that mutual funds be given adequate time to develop and implement the requirements of any final rule implementing section 326. The transition periods suggested by commenters ranged from 90 days to 12 months after the publication of a final rule.

The final rule modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, we recognize that some mutual funds will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training staff, reprinting forms, and developing new software. Accordingly, although this rule will be effective 30 days after publication, mutual funds will have a transition period to implement the rule. Treasury and the Commission have determined that each mutual fund must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis

Section 131(a) Definitions

Section 103.131(a)(1) Account. We proposed to define ''account'' as any contractual or other business relationship between a customer and a mutual fund established to effect financial transactions in securities, including the purchase or sale of securities.[15] The final rule limits the definition of ''account'' to relationships between a person and a mutual fund that are established to effect *transactions in securities issued by the mutual fund* in order to clarify that the purchase or sale of a mutual fund's underlying portfolio securities does not establish an ''account'' for purposes of this rule.[16]

The proposed rule stated that transfers of accounts from one mutual fund to another are outside the definition of ''account'' for purposes of

[11] Proposed rule, *supra* note 1. Treasury simultaneously published (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks; (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a federal functional regulator; (3) jointly with the SEC, a proposed rule applicable to broker-dealers; and (4) jointly with the CFTC, a proposed rule applicable to futures commission merchants and introducing brokers. Customer Identification Programs for Banks, Savings Associations, and Credit Unions, 67 FR 48290 (July 23, 2002); Customer Identification Programs for Certain Banks (Credit Unions, Private Banks and Trust Companies) That Do Not Have a Federal Functional Regulator, 67 FR 48299 (July 23, 2002); Customer Identification Programs for Broker-Dealers, 67 FR 48306 (July 23, 2002); Customer Identification Programs for Futures Commission Merchants and Introducing Brokers, 67 FR 48328 (July 23, 2002). Treasury, the Commission, the CFTC, and the banking agencies received approximately five hundred comments in response to these proposed rules. Many of those commenters raised issues similar to those we received in connection with the proposal respecting mutual fund customer identification programs.

[12] The comment letters are available for public inspection and copying in the SEC's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7–26–02).

[13] For example, two commenters suggested that the rule exclude accounts opened by participants in qualified retirement plans or other qualified benefit plan customers.

[14] 17 CFR 270.0–11.

[15] *See* proposed § 103.131(a)(1).

[16] *See* § 103.131(a)(1)(i). Three commenters suggested that the definition of ''account'' be limited to formal ongoing relationships, as in the CIP rules proposed by Treasury and the banking agencies. These commenters suggested that, as proposed, the definition could be read to include isolated transactions where an account relationship with the mutual fund is not established. Treasury and the banking agencies proposed to limit the definition of ''account'' to ''ongoing transactions'' to specifically address situations where a person obtains certain services or products from a bank such as cashing or buying a check or purchasing a wire transfer or money order. The final rules being issued by the Treasury and the banking agencies do not include the term ''ongoing'' in their definitions of ''account.'' Instead, their definitions of ''account'' now specifically exclude these types of products or services and any others where a ''formal banking relationship'' is not established with a person. Mutual funds do not offer these types of products or services to persons who are not fund shareholders. Thus, we did not include the term ''ongoing'' in the definition of account or adopt the specific exclusions included in the bank rules.

the proposed rule.[17] The final rule codifies and clarifies this ''transfer exception,'' by excluding from the definition of ''account'' any account that a mutual fund acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party. Because these transfers are not initiated by customers, the accounts do not fall within the scope of section 326.[18] Finally, the rule excludes from the definition of ''account'' accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974.[19] Two commenters recommended that these accounts be excluded from the rule. We believe that these accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with federal regulations that impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements. Therefore, we have decided to exclude them from the definition of ''account'' in the final rule.

Section 103.131(a)(2) Customer. We proposed to define ''customer'' to mean any mutual fund shareholder of record who opens a new account with a mutual fund, and any person authorized to effect transactions in the shareholder of record's account.[20] The proposed rule described various relationships that would be included in, or excluded from, the definition of ''customer.''[21] Seven commenters expressed concern about the proposed definition. Three commenters recommended that the final rule provide that persons who do not actually establish an account or receive services from a mutual fund are not ''customers.'' One commenter recommended that the rule define ''customer'' as a person who opens a new account, and explicitly exclude existing customers. Two commenters suggested that a person who exchanges fund shares within a fund family be excluded, whether or not the exchange occurred in a single account.

We have revised the definition of ''customer'' to address these and other issues. The final rule defines ''customer'' as ''a person that opens a new account.''[22] For example, in the case of a trust account, the ''customer'' would be the trust. For purposes of this rule, a mutual fund is not required to look through a trust, or similar account to verify the identities of beneficiaries, and instead is required only to verify the identity of the named accountholder.[23] Similarly, with respect to an omnibus account established by an intermediary, a mutual fund generally is not required to look through the intermediary to the underlying beneficial owners.[24]

The final rule clarifies the treatment of a minor child or an informal group with a common interest (*e.g.*, a civic club), where there is no legal entity. In those circumstances, ''customer'' includes ''an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club.''[25]

In order to make the rule less burdensome, the final rule excludes from the definition of ''customer'' certain readily identifiable entities, including: (1) Financial institutions regulated by a federal functional regulator; (2) banks regulated by a state bank regulator; and (3) governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, the entities described in § 103.22(d)(2)(ii)–(iv)).[26] Finally, the definition of ''customer'' excludes a person that has an existing account with a mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.[27]

Five commenters objected to the proposal to define ''customer'' to include all persons with authority to effect transactions in the account of a shareholder of record.[28] While acknowledging that there are circumstances in which it would be appropriate to verify the identity of all such persons (*e.g.*, accountholders that are small or closely held corporations), they asserted that the proposal in this respect was overbroad and unduly burdensome, and would not further the goals of the statute. In light of these comments, we have revisited the issue and have determined that requiring a mutual fund to verify the identity of all such parties could interfere with the mutual fund's ability to focus on identifying customers that present a significant risk of not being properly identified. Accordingly, the final rule does *not* define ''customer'' to include persons authorized to effect transactions in the account of a shareholder of record. Rather, a mutual fund's CIP must address situations in which the mutual fund will take additional steps to verify the identity of a customer that is not an individual (such as a corporation or partnership) by seeking information about individuals with authority or control over the account, including persons with authority to effect transactions in the account.[29]

Section 103.131(a)(3) Federal functional regulator. The proposed rule did not define ''federal functional regulator.'' The final rule uses the term in several provisions, including the provisions concerning government lists and reliance on other financial institutions. The final rule defines the term by reference to § 103.120(a)(2), meaning each of the banking agencies, the SEC, and the CFTC.

Section 103.131(a)(4) Financial institution. The proposed rule did not define ''financial institution.'' The final rule uses the term in several provisions,

[17] *See* proposed rule, *supra* note 1, Section I.A.

[18] Section 326 of the Act provides that the regulations thereunder shall require financial institutions to implement reasonable procedures for ''verifying the identity of *any person seeking to open an account.*'' (emphasis added) If a financial institution acquires a pre-existing account, the customer is not opening an account with the financial institution. Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a mutual fund to verify the identity of customers associated with the accounts that it acquires from another financial institution. We expect financial institutions to implement reasonable procedures to detect money laundering in any accounts, however acquired. A mutual fund may, as part of its AML compliance program, need to take additional steps to verify the identity of customers, based on its assessment of the relevant risks.

[19] Section 103.131(a)(1)(ii)(B).

[20] Proposed § 103.131(a)(3).

[21] *See* proposed rule, *supra* note 1, Section II.A.

[22] Section 103.131(a)(2)(i). Each person named on a joint account is a ''customer'' under this final rule unless otherwise provided.

[23] However, based on its risk assessment of a new account opened by a customer that is not an individual, a mutual fund may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C). *See* notes 82–84 *infra* and accompanying text, discussing procedures for additional verification for certain customers. A mutual fund may, as a part of its AML compliance program, need to take additional steps to verify the identity of customers, based on its assessment of the relevant risks.

[24] *See* also note 47 *infra* and accompanying text, discussing omnibus accounts.

[25] Section 103.131(a)(2)(i)(B).

[26] Section 103.131(a)(2)(ii)(A)–(B). Section 103.22(d)(2)(ii)–(iv) exempts such companies only to the extent of their domestic operations. Accordingly, a mutual fund's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

[27] Section 103.131(a)(2)(ii)(C). Although a customer of one mutual fund would not necessarily be considered an existing customer of other funds in the same fund complex, one fund may rely on another fund's performance of any elements of its CIP. *See* discussion at notes 115–122 and accompanying text, *infra* describing circumstances in which a fund may rely on the performance of all or part of its CIP by another financial institution, including another fund in the fund complex.

[28] Proposed § 103.131(a)(3)(ii).

[29] Section 103.131(b)(2)(ii)(C). See discussion at notes 82–84 and accompanying text, *infra*.

including the definition of ''customer'' and the provisions on verification through non-documentary methods, notices, and reliance on other financial institutions. Therefore, the final rule defines the term by cross-reference to the BSA.[30]

Section 103.131(a)(5) Mutual fund. We proposed to define ''mutual fund'' as an ''investment company'' that is an ''open-end company'' (as those terms are defined in the 1940 Act).[31] We have revised the definition to limit it to entities that are registered or are required to register with the SEC under section 8 of the 1940 Act.[32] This change clarifies that the rule does not apply to foreign mutual funds that meet the statutory definition but are not subject to the registration requirements of the 1940 Act.

Section 103.131(a)(6) Non-U.S. person. We proposed to define ''non-U.S. person'' as a person that is not a U.S. person.[33] There were no comments on this definition and we are adopting it as proposed.

Section 103.131(a)(7) Taxpayer identification number. We proposed to define ''taxpayer identification number'' by reference to section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service.[34] There were no comments on this approach and we are adopting it substantially as proposed, with minor technical modifications.

Section 103.131(a)(8) U.S. person. We proposed to define ''U.S. person'' as a U.S. citizen, or a corporation, partnership, trust, or person (other than a natural person) established or organized under the laws of a State or the United States.[35] There were no comments on this definition and we are adopting it substantially as proposed, with technical changes that conform the definition to that used in the final CIP rules for other financial institutions.

Section 103.131(b) Customer Identification Program: Minimum Requirements

Section 103.131(b)(1) General Rule. We proposed to require that each mutual fund establish, document, and maintain a written CIP as part of its required anti-money laundering (AML) program, and that the procedures of the CIP enable the fund to form a reasonable belief that it knows the true identity of a customer.[36] The mutual fund's CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including (1) the mutual fund's size; (2) the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected; (3) the mutual fund's types of accounts; and (4) the mutual fund's customer base.[37] The proposed rule discussed these risk factors and explained that, although the rule requires certain minimum identifying information and suitable verification methods, mutual funds should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.[38] Commenters generally supported the approach of the proposed general CIP requirements and we are adopting them substantially as proposed, although the final rule reorganizes the provisions of the CIP requirements section.[39]

The proposed rule would have required a mutual fund's CIP to be approved by the fund's board of directors or trustees.[40] Four commenters requested clarification that the provision would not require ongoing review or monitoring by the board. One commenter observed that fund AML programs must already be approved by the board, and suggested that it would be redundant to require that the CIP, which is part of the fund's AML program, be separately approved.[41] In order to eliminate any duplicative requirements we are eliminating the board approval requirement from the final rule. We note, however, that a fund with an AML program that the board has approved as required, must nonetheless obtain board approval of a new CIP. The addition of the CIP is a material change that must be approved by the board.

Section 103.131(b)(2) Identity verification procedures. We proposed to require that a mutual fund's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[42] Commenters supported these general requirements, although five commenters recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and we are adopting the provisions on identity verification procedures substantially as proposed. Under the final rule, a mutual fund's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.[43] Such procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer.[44] The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base.[45] As noted in the proposed rule, a mutual fund's CIP need not include procedures for verifying identities of persons whose transactions are conducted through an omnibus account.[46] The holder of the omnibus account (*e.g.*, a broker-dealer) is considered to be the customer for purposes of this rule.[47]

[30] Section 103.131(a)(4), referring to 31 U.S.C. 5312(a)(2) and (c)(1). This definition is more expansive than the definition of ''financial institution'' in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

[31] Proposed § 103.131(a)(4).

[32] Section 103.131(a)(5).

[33] Proposed § 103.131(a)(8).

[34] Proposed § 103.131(a)(6).

[35] Proposed § 103.131(a)(7).

[36] Proposed § 103.131(b). 31 CFR 103.130 requires mutual funds to develop and implement AML programs.

[37] *Id.*

[38] Proposed rule, *supra* note 1, Section II.B.

[39] In the final rule, § 103.131(b)(1) specifies the general requirement that a mutual fund adopt a written CIP appropriate for its size and type of business, and that the CIP must be a part of the mutual fund's AML program under 31 CFR 103.130. The discussion of the factors to be considered in implementing a CIP now is in § 103.131(b)(2).

[40] Proposed § 103.131(i).

[41] *See* 31 CFR 103.130(b) (requiring that each mutual fund's AML program be approved in writing by its board of directors or trustees).

[42] Proposed § 103.131(d).

[43] Section 103.131(b)(2). Other elements of the fund's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

[44] *Id.*

[45] *Id.*

[46] Proposed rule, *supra* note 1, Section II.B.

[47] *See* note 24 *supra* and accompanying text. This treatment of omnibus accounts is consistent with the legislative history of the Act, which includes the following: ''[W]here a mutual fund sells its shares to the public through a broker-dealer and maintains a ''street name'' or omnibus account in the broker-dealer's name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to ''look through'' the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan, and not its participants, would be the fund's customers. Thus the fund would not be required to ''look through'' the plan to identify its participants.'' H.R. Rep. 107–250, pt. 1, at 62 (2001).

Section 103.131(b)(2)(i) Customer Information Required

The proposed rule would have required a mutual fund's CIP to require the fund to obtain certain identifying information about each customer, including, at a minimum: (1) Names; (2) dates of birth, for natural persons; (3) certain addresses;[48] and (4) certain identification numbers.[49] The proposed rule further stated that in certain circumstances a mutual fund should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.[50]

Commenters expressed some concerns about this aspect of the proposal. Two commenters objected to the proposed requirement to obtain more than one address from a customer. Two commenters pointed out that a non-U.S. person may not have any of the specified identification numbers. One commenter recommended that the rule permit a mutual fund to obtain the foreign equivalent of a taxpayer identification number from non-U.S. persons, or a number and country of issuance of any government-issued document evidencing nationality or residence, without the requirement of a photograph or similar safeguard, from non-U.S. entities. Two commenters argued that the final rule should provide financial institutions with flexibility to determine what information to obtain, using a risk-based approach.

We are adopting the customer information provisions substantially as proposed, with changes to accommodate individuals who may not have physical addresses. Prior to opening an account, a mutual fund must obtain, at a minimum, a customer's (1) name; (2) date of birth, for an individual; (3) address; and (4) identification number.[51] The address must be (1) for an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.[52]

We are adopting the identification number requirement substantially as proposed. For a customer that is a U.S. person, the identification number is a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number). For a customer that is not a U.S. person, the identification number is one or more of the following: a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[53] This provision provides a mutual fund with some flexibility to choose among a variety of identification numbers that it may accept from a non-U.S. person.[54] However, the identifying information the mutual fund accepts must permit the fund to establish a reasonable belief that it knows the identity of the customer.[55]

The proposed rule included an exception from the requirement to obtain a taxpayer identification number from a customer opening a new account. The exception would have allowed a mutual fund to open an account for a person that has applied for, but has not yet received, an employer identification number (EIN).[56] We are adopting an expanded version of this exception in the final rule. As proposed, the exception was limited to persons that are not natural persons.[57] On further consideration, we have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a taxpayer identification number.[58] We have also modified the exception to reduce the recordkeeping burden for mutual funds. The proposed rule would have required the mutual fund to retain a copy of the customer's application for a taxpayer identification number. The final rule permits the fund to exercise discretion to determine how to confirm that a customer has filed an application.[59]

Section 103.131(b)(2)(ii) Customer Verification

We proposed to require that a mutual fund's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.[60] We also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[61] The proposed rule stated that a mutual fund need not verify each piece of identifying information if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.[62] The proposed rule also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner, that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending, and that the appropriate amount of time may depend on the type of account opened, whether the customer opens the account

[48] Proposed § 103.131(c)(1)(iii). We proposed to require funds to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing address (if different) for a person other than a natural person.

[49] Proposed § 103.131(c)(1)(iv). We proposed to require funds to obtain: (1) for a customer that is a U.S. person, a taxpayer identification number, or (2) for a customer that is not a U.S. person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

[50] Proposed rule, *supra* note 1, Section II.C.

[51] Section 103.131(b)(2)(i)(A).

[52] Section 103.131(b)(2)(i)(A)(3).

[53] Section 103.131(b)(2)(i)(A)(4).

[54] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a mutual fund. *See* Treasury Department, ''A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act,'' October 21, 2002.

[55] We emphasize that the rule neither endorses nor prohibits a mutual fund from accepting information from particular types of identification documents issued by foreign governments. The mutual fund must determine, based upon appropriate risk factors, including those discussed above, whether the information presented by a customer is reliable. We recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore the final rule notes that when opening an account for such a customer, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

[56] Proposed § 103.131(c)(2). This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning ''awaiting-TIN [taxpayer identification number] certificates.'' The IRS permits a taxpayer to furnish an ''awaiting-TIN certificate'' in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.* interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)–3.

[57] In the proposed rule, we explained that the exception was for businesses that may need to open a mutual fund account before they receive an EIN from the Internal Revenue Service. Proposed rule, *supra* note 1, Section II.C.

[58] Section 103.131(b)(2)(i)(B).

[59] The mutual fund's CIP must include procedures to confirm that the application was filed before the person opens the account and obtain the taxpayer identification number within a reasonable period of time after the account is opened. Section 103.131(b)(2)(i)(B).

[60] Proposed § 103.131(d).

[61] *Id.*

[62] Proposed rule, *supra* note 1, Section II.D.

in person, and the type of identifying information available.[63]

The final rule adopts the customer verification requirements substantially as proposed, with modifications that conform this provision of the final rule to the revised definition of ''customer,'' described above. The final rule requires that the CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time after the account is opened.[64] The final rule does not require verification if a person is granted authority to effect transactions with respect to an account. As stated in the proposed rule, mutual funds must exercise in a reasonable manner the flexibility to undertake verification within a reasonable time. The amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in-person, and the type of identifying information that is available.[65]

The final rule also requires that a mutual fund's CIP include procedures that describe when the fund will use documents, non-documentary methods, or a combination of both to verify customer identities.[66] Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the mutual fund's assessment of the relevant risk factors.[67]

Section 103.131(b)(2)(ii)(A) Customer Verification—Through Documents

We proposed to require that a mutual fund's CIP describe documents that the fund will use to verify customers' identities. Suitable documents for verification would include: (1) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and (2) for persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.[68]

Three commenters noted problems with the use of documents to verify customers' identities. Two commenters stated that it is impossible to obtain objective verification that documents are authentic, complete or current. One commenter pointed out that some states do not require documentation of certain legal entities, and that, as a result, there may be no documentary evidence of such entities. One commenter stated that documents, even government-issued identification cards, are inadequate as a sole means of verification, and recommended that the rule require a mutual fund also to obtain information about customers from unrelated sources. The final rule attempts to strike an appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement. The final rule requires a mutual fund's CIP to contain procedures that set forth the documents that the mutual fund will use for verification.[69] Each mutual fund will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify customer identities, given the risk factors that are relevant to the mutual fund.[70]

In light of recent increases in identity theft and the availability of fraudulent documents, we believe that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, we encourage mutual funds to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, we encourage mutual funds to use a variety of methods to verify the identity of a customer, especially when the mutual fund does not have the ability to examine original documents.

The final rule continues to include, without significant change, an illustrative list of identification documents.[71] A mutual fund may use other documents, provided that they allow the fund to establish a reasonable belief that it knows the true identity of the customer. In addition to the risk factors described in paragraph (b)(2), the mutual fund should take into account the problems of authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the fund knows the true identity of the customer, and may require the use of non-documentary methods in addition to documents.

Section 103.131(b)(2)(ii)(B) Customer Verification—Through Non-Documentary Methods

Recognizing that some accounts are opened by telephone, by mail and over the Internet, we proposed to require a mutual fund's CIP to describe what non-documentary methods the fund would use to verify customers' identities and when the fund would use these methods in addition to, or instead of, relying on documents.[72] We explained that the proposed rule allowed the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet.[73] We also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.[74]

The proposed rule provided examples of non-documentary verification methods that a mutual fund may use, including: Contacting a customer; independently verifying information through credit bureaus, public databases, and other sources; and checking references with other financial institutions.[75] In the proposed rule we observed that mutual funds may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP

[63] *Id.*

[64] Section 103.131(b)(2)(ii).

[65] It is possible, however, that a mutual fund would violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control prohibiting transactions involving designated foreign countries or their nationals).

[66] *Id.* In the proposed rule, this language was in the provisions on verification through documents and non-documentary methods. Proposed § 103.131(d)(1) and (2).

[67] Section 103.131(b)(2) describes these risk factors.

[68] Proposed § 103.131(d)(1).

[69] Section 103.131(b)(2)(ii)(A).

[70] Once a mutual fund obtains and verifies the identity of a customer through a document, such as a driver's license or passport, the fund is not required to take steps to determine whether the document has been validly issued. A fund generally may rely on government issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the fund must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

[71] For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. § 103.131(b)(2)(ii)(A)(*1*). For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument. § 103.131(b)(2)(ii)(A)(*2*).

[72] Proposed § 103.131(d)(2).

[73] Proposed rule, *supra* note 1, Section II.D.2.

[74] *Id.*

[75] Proposed § 103.131(d)(2).

code, telephone number (if provided), date of birth, and social security number.[76]

We proposed to require mutual funds to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the mutual fund is presented with unfamiliar documents to verify the identity of a customer; or (3) the mutual fund does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.[77] In the proposed rule we explained that we recognize that identification documents may be obtained illegally and may be fraudulent.[78] In light of the recent increase in identity theft, we encouraged mutual funds to use non-documentary methods even when the customer has provided identification documents.[79]

One commenter requested that we clarify that account applicants who are not physically present at an account opening may be treated under the mutual fund's non-documentary verification methods. Another commenter suggested that the proposed non-documentary methods of verification would be ineffective for foreign individuals, and therefore could preclude foreign individuals who are not physically present in the United States from investing in mutual funds.

We recognize that there are many scenarios and combinations of risk factors that mutual funds may encounter, and we have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity. Under the final rule, for a mutual fund relying on non-documentary verification methods, the CIP must contain procedures that describe non-documentary methods the mutual fund will use. The final rule includes an illustrative list of methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.[80] As we stated in the proposed rule, we recommend that mutual funds analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

The final rule also includes a list, similar to that in the proposal, of circumstances that may require the use of non-documentary procedures. The final rule requires that non-documentary procedures address circumstances in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the mutual fund is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.[81]

As we stated in the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, we encourage mutual funds to use non-documentary methods even when the customer has provided identification documents.

Section 103.131(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described above, we proposed to require verification of the identity of any person authorized to effect transactions in a shareholder's account with a mutual fund. Most commenters objected to this requirement, and it does not appear in the final rule.[82] For the reasons discussed below, however, the rule does require that a mutual fund's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the SEC believe that while mutual funds may be able to verify the majority of customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that the mutual fund will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. We believe that a mutual fund must identify customers that pose a heightened risk of not being properly identified and that a mutual fund's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the customer, when standard documentary or non-documentary methods prove to be insufficient.

The final rule, therefore, includes a new provision on verification procedures.[83] This provision requires that the CIP address circumstances in which, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund also will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the shareholder's account, in order to verify the customer's identity.[84] This additional verification method will apply only when the mutual fund cannot adequately verify the customer's identity using the documentary and non-documentary verification methods.[85]

Section 103.131(b)(2)(iii) Lack of Verification

We proposed to require that a mutual fund's CIP include procedures for responding to circumstances in which the fund cannot form a reasonable belief that it knows the true identity of the customer.[86] We explained in the proposed rule that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional purchases.[87] We also explained that

[76] Proposed rule, *supra* note , Section II.D.2.

[77] Proposed § 103.131(d)(2).

[78] Proposed rule, *supra* note 1, Section II.D.2.

[79] *Id.*

[80] Section 103.131(b)(2)(ii)(B)(*1*).

[81] Section 103.131(b)(2)(ii)(B)(*2*). The final clause acknowledges that there may be circumstances, beyond those specifically described in this provision, when a mutual fund should use non-documentary verification procedures.

[82] *See supra* notes 28–29, and accompanying text.

[83] Section 103.131(b)(2)(ii)(C).

[84] *Id.*

[85] *Id.* A mutual fund need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's true identity using standard documentary and non-documentary verification methods.

[86] Proposed § 103.131(g).

[87] *See* proposed rule, *supra* note 1, at section II.G.

there should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.[88]

The final rule adopts this provision substantially as proposed, and adds a description of recommended features of these procedures, based on the features described in the proposed rule.[89] The final rule states that the procedures should describe: (1) When the mutual fund should not open an account; (2) the terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity; (3) when the mutual fund should file a Suspicious Activity Report (SAR) in accordance with applicable law;[90] and (4) when the mutual fund should close an account, after attempts to verify a customer's identity have failed.[91]

Section 103.131(b)(3) Recordkeeping

Section 103.131(b)(3)(i) Required Records. We proposed to require mutual fund CIPs to include certain recordkeeping procedures.[92] First, the proposed rule would have required that a mutual fund maintain a record of the identifying information provided by customers.[93] Second, if a mutual fund relies on a document to verify a customer's identity, the proposed rule would have required the mutual fund to maintain a copy of the document.[94] Third, the proposed rule would have required mutual funds to record the methods and results of any additional measures undertaken to verify the identity of customers.[95] Finally, the proposed rule would have required mutual funds to record the resolution of any discrepancy in the identifying information obtained.[96]

Six commenters expressed concern that the recordkeeping requirements as proposed were unduly burdensome. Two commenters recommended that the rule be modified to incorporate a materiality standard so that a fund need retain only those records that reflect the resolution of material discrepancies. Three commenters recommended that we eliminate the requirement that mutual funds retain copies of documents used to verify customer identities. One commenter requested clarification on the types of records that will suffice to memorialize non-documentary customer verification methods and their results.

In light of these comments, we have reconsidered and modified the recordkeeping requirements of the rule. The final rule provides that a mutual fund's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a mutual fund develop and implement a CIP.[97] However, the final rule is significantly more flexible than the proposed rule. Under the final rule, in addition to required identifying information about a customer, a mutual fund's records must include a description, rather than a copy, of any document that the mutual fund relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any.[98] The record must include ''a description'' of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any ''substantive'' discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.[99]

As we stated in the proposed rule, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act.[100] A mutual fund may use electronic records to satisfy the requirements of this final rule, in accordance with guidance that the Commission has issued.[101]

Section 103.131(b)(3)(ii) Record Retention

We proposed to require that a mutual fund retain all required records for five years after the account is closed.[102] Six commenters expressed concern about this aspect of the proposal, recommending that the recordkeeping period be shortened, or that mutual funds be required to retain records only for five years after verification of the customer's identity.

We believe that, by eliminating the requirement that a mutual fund retain copies of documents used to verify customer identities, the final rule addresses many of the commenters' concerns. Nonetheless, we believe that, while the identifying information provided by customers should be retained, there is little value in requiring mutual funds to retain the remaining records for five years after an account is closed, because this information is likely to be stale. Therefore, the final rule prescribes a bifurcated record retention schedule that is consistent with a general five-year retention requirement. Under the final rule, the mutual fund must retain the information referenced in paragraph (b)(3)(i)(A) (*i.e.*, information obtained about a customer) for five years after the date the account is closed.[103] The mutual fund need only retain a record that it must make and maintain under the other recordkeeping provisions, paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, information that verifies a customer's identity) for five years after the record is made.[104]

Section 103.131(b)(4) Comparison With Government Lists

We proposed to require that a mutual fund's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the fund.[105] In addition, the proposed rule stated that mutual funds must follow all federal directives issued in connection with such lists.[106]

Six commenters recommended that the final rule specify which government lists must be checked and provide a mechanism for communicating that information to mutual funds. These commenters also suggested that all such lists be consolidated, and that mutual funds not be required to check such lists until an account is established or a customer receives services from the fund.

The final rule states that a mutual fund's CIP must include procedures for

[88] *Id.*

[89] § 103.131(b)(2)(iii).

[90] Although mutual funds are not currently required to file SARs, they are encouraged to do so voluntarily. On January 21, 2003, Treasury proposed new rule 31 CFR 103.15 which, if adopted, will require mutual funds to file SARs in certain circumstances. 68 FR 2716 (Jan. 21, 2003).

[91] Section 103.131(b)(2)(iii)(A)–(D).

[92] Proposed § 103.131(h).

[93] Proposed § 103.131(h)(1).

[94] *Id.*

[95] Proposed § 103.131(h)(2).

[96] Proposed § 103.131(h)(3).

[97] Section 103.131(b)(3).

[98] Section 103.131(b)(3)(i)(A)–(B).

[99] Section 103.131(b)(3)(i)(C)–(D).

[100] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001).

[101] *See* Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Company Act Release No. 24991 (May 24, 2001)[66 FR 29224 (May 30, 2001)].

[102] Proposed § 103.131(h).

[103] Section 103.131(b)(3)(ii). The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

[104] *Id.*

[105] Proposed § 103.131(e).

[106] *Id.*

determining whether the name of the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.[107] Because Treasury and the federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that mutual funds must check. However, mutual funds will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the federal government. Instead, mutual funds will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

We also have modified this provision to give guidance as to when a mutual fund must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the mutual fund to determine whether a customer appears on a list ''within a reasonable period of time'' after the account is opened, or earlier if required by another federal law or regulation or by a federal directive issued in connection with the applicable list.[108]

The final rule also requires a mutual fund's CIP to include procedures that require the fund to follow all federal directives issued in connection with such lists. Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.

Section 103.131(b)(5) Customer Notice

We proposed to require that a mutual fund's CIP include procedures for providing customers with adequate notice that the fund is requesting information to verify their identities.[109] The proposed rule stated that a mutual fund could satisfy that notice requirement by generally notifying its customers about the fund's verification procedures.[110] It stated that if an account is opened electronically, such as through an Internet website, the mutual fund could provide notice electronically.

Three commenters generally supported the proposal, but asked that we provide model language and additional guidance about the circumstances in which a mutual fund would be deemed to comply with the requirement. One commenter stated that the proposed notice requirement was overbroad.

The Act requires that our rules ''at a minimum, require financial institutions to * * * [give] customers * * * adequate notice'' of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires a mutual fund's CIP to include procedures for providing fund customers with adequate notice that the fund is requesting information to verify their identities.[111] The final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule states that notice is adequate if the mutual fund generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account.[112] The final rule states that a mutual fund may, depending on how an account is opened, post a notice on its website, include the notice on its account applications, or use any other form of oral or written notice.[113] In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a mutual fund's customers when provided in accordance with the requirements of this final rule.[114]

Section 103.131(b)(6) Reliance on Other Financial Institutions

In the proposed rule we recognized that because mutual funds typically conduct their operations through separate entities, some elements of the CIP will best be performed by personnel of these separate entities.[115] As we stated, it is permissible for a mutual fund to contractually delegate the implementation and operation of its CIP to another affiliated or unaffiliated service provider, such as a transfer agent.[116] However, the mutual fund remains responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.[117]

Four commenters suggested that, in certain circumstances, mutual funds be permitted to rely on customer identification and verification performed by other financial institutions (including other funds in the same fund complex). Two commenters suggested that an investor that opens an account or conducts a transaction with a mutual fund through another financial institution that is itself subject to BSA anti-money laundering and CIP requirements should be considered a customer of the other financial institution and not a customer of the mutual fund. One commenter suggested that all intermediated accounts (*i.e.*, accounts that are opened through another financial institution) be treated similarly to omnibus accounts when the intermediary has identification and verification responsibilities under the BSA.

We recognize that there may be circumstances in which a mutual fund should be able to rely on the performance by another financial institution of some or all of the elements of the fund's CIP. Therefore, the final rule provides that a mutual fund's CIP may include procedures that specify when the fund will rely on the performance by another financial institution of any procedures of the fund's CIP and thereby satisfy the mutual fund's obligations under the rule.[118] Reliance is permitted if a customer of the mutual fund is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.[119]

In order for a mutual fund to rely on the other financial institution, (1) such reliance must be reasonable under the circumstances, (2) the financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a federal functional regulator, and (3) the other financial institution must enter into a contract with the mutual fund requiring it to certify annually to the mutual fund that it has implemented an anti-money laundering program and will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.[120] The contract and certification will provide a standard means for a mutual fund to demonstrate the extent to which it is relying on another

[107] Section 103.131(b)(4).

[108] *Id.*

[109] Proposed § 103.131(f).

[110] Proposed rule, *supra* note 1, at section II.F.

[111] Section 103.131(b)(5)(i).

[112] Although a fund may include the notice in its prospectus, the prospectus would need to be provided to the investor no later than the trade date in order to satisfy the requirement that the notice be provided in a manner reasonably designed to ensure that a customer receives it before the account is opened.

[113] Section 103.131(b)(5)(ii).

[114] Section 103.131(b)(5)(iii).

[115] Proposed rule, *supra* note 1, section II.B.

[116] *Id.*

[117] *Id.*

[118] *See* § 103.131(b)(6).

[119] *Id.*

[120] *Id.*

institution to perform its CIP and that the institution has in fact agreed to perform these requirements.[121] If it is not clear from these documents, a mutual fund must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer. The mutual fund will not be held responsible for the failure of the other financial institution to fulfill adequately the mutual fund's CIP responsibilities, provided that the mutual fund can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the SEC emphasize that the mutual fund and the other financial institution upon which it relies must satisfy all of the conditions set forth in this final rule. If they do not, then the mutual fund remains solely responsible for applying its own CIP to each customer in accordance with this rule.[122]

All of the federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the federal functional regulators expect to cooperate and share information to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this rule.

Section 103.131(c) Exemptions

The proposed rule provided that the SEC, with the concurrence of Treasury, may by order or regulation exempt any mutual fund or type of account from the requirements of the rule.[123] Under the proposal, in issuing such exemptions, the SEC and Treasury were to consider whether the exemption is consistent with the purposes of the BSA, and in the public interest.[124] The proposal stated that the SEC and Treasury could also consider other necessary and appropriate factors.[125]

Six commenters recommended that various types of accounts and customers be exempted from the final rule (*e.g.*, participants in qualified retirement plans, court-appointed executors and guardians, and individuals granted authority to effect transactions in an account upon the death of a shareholder). We have incorporated any suggested exemptions that we have determined to be appropriate into the definitions of ''account'' and ''customer,'' for the reasons described above.[126] We are adopting this provision of the rule as proposed.

Section 103.131(d) Other Requirements Unaffected

The final rule includes a provision, parallel to that in the rules that require other financial institutions to adopt and implement CIPs,[127] to the effect that nothing in § 103.131 shall be construed to relieve a mutual fund of its obligations to obtain, verify, or maintain information that is required by another regulation in part 103. This provision will resolve any ambiguity if mutual funds in the future become obligated to obtain, verify, or maintain information under such regulations.

III. The Commission's Analysis of the Costs and Benefits Associated With the Final Rule

Treasury and the Commission are sensitive to the costs and benefits imposed by their rules. Nevertheless, we believe that the rule imposes no costs in addition to those that would result from compliance with the USA PATRIOT Act by mutual funds. While the Commission believes the costs of the rule are attributable to the statute, the Commission has nonetheless undertaken an analysis of these requirements.

Section 326 requires Treasury and the Commission to prescribe regulations setting forth minimum standards for mutual funds regarding verification of the identities of customers.[128] The rule requires mutual funds to implement a written CIP as part of the anti-money laundering programs required by 31 U.S.C. 5318(h). The CIP must include risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable. As required by section 326, these procedures must (1) specify the identifying information that the mutual fund will obtain with respect to each customer, (2) contain procedures for verifying the identity of the customer, within a reasonable time after the account is opened, using documents, non-documentary methods, or a combination of both, and (3) include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of the customer. The CIP also must include procedures for (1) maintaining a record of all information obtained (for either five years after the date the account is closed or five years after the record is made, depending on the type of information), (2) determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators, and (3) providing customers with adequate notice that the mutual fund is requesting information to verify their identities.

As discussed in more detail below, the Commission estimates that approximately 890 registered mutual funds and fund ''families'' are required to comply with section 326.[129] The requirements of section 326 as implemented by today's rule will impose initial, one-time costs and ongoing costs on mutual funds and fund families. The costs associated with establishment of CIPs and modification of computer systems and account applications (both paper and web-based applications) to conform to the information and notice requirements of the CIP will represent initial, one-time costs. Ongoing costs for mutual funds

[121] A mutual fund must be able to demonstrate that the other financial institution has agreed to perform the relevant requirements of the fund's CIP, regardless of whether the other financial institution is an affiliated person of the fund. Accordingly, the contract and certification requirement in the final rule applies equally to affiliated person or unaffiliated person reliance.

[122] This provision of the rule does *not* affect the ability of a mutual fund to contractually delegate the implementation and operation of its CIP to another service provider. However, the mutual fund remains responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.

[123] Proposed § 103.131(j).

[124] *Id.*

[125] *Id.*

[126] *See* notes 15–19, 20–30 and accompanying text *supra.*

[127] As to the rules that require other financial institutions to adopt and implement CIPs, *see supra* Section I.A.

[128] As discussed above, section 326 provides that such regulations, at a minimum, must require financial institutions to implement, and customers to comply with, reasonable procedures for—(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and (C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list. *See* Section I.A. *supra.*

[129] Currently there are an estimated 3,060 mutual funds registered with the SEC. The 3,060 registered mutual funds are advised by approximately 890 different primary investment advisers. We assume, for purposes of this analysis, that mutual funds that share a common primary investment adviser are part of the same fund family. Therefore, we assume that 890 fund families will be required by today's rule to develop and implement a CIP. For purposes of estimating the total costs associated with section 326 requirements in the Proposed rule, we assumed that each mutual fund would be responsible for establishing a CIP. *See* proposed rule, *supra* note 11 at Section V.B.1. Consequently, the initial cost for the 3,060 mutual funds was estimated to be approximately $19,125,000. In the proposed rule, we acknowledged that using the number of mutual funds to estimate the costs may result in a high estimate of those costs, and said that we assumed that, in many instances, a single CIP will be developed by a mutual fund family and used by all of the funds in that family. *See* proposed rule, *supra* note 11, at n.20.

and fund families will include: (1) Collecting the information required by the CIP; (2) verifying customers' identities; (3) determine whether customers appear on designated lists issued by federal government agencies; and (4) making and maintaining required records. The magnitude of these ongoing costs will, in large part, depend on the number of new accounts opened.

The Commission and Treasury believe that the requirements in the final rule are reasonable and practicable and that, accordingly, the costs to mutual funds and fund families of compliance with the rule's requirements are attributable to the statute. In the proposed rule, we requested comment and specific data regarding the costs and benefits of the proposed rule. We did not receive any data in comment letters concerning the costs and benefits of the proposed rule.

A. Benefits Associated With the Final Rule

We anticipate that mutual funds, fund customers, and the nation as a whole will benefit from the new rule. The anti-money laundering provisions of the USA PATRIOT Act are intended to facilitate the prevention, detection, and prosecution of money laundering and terrorist financing. Today's rule implements an important part of those provisions. By requiring that mutual funds establish CIPs, section 326 and the rule will limit the ability of criminals, including terrorists, to use mutual fund accounts to finance their activities, or shelter the proceeds of criminal conduct. Moreover, mutual fund CIPs should deter criminals from using mutual fund accounts to perpetrate fraud on the fund complex (by placing fictitious buy and sell orders) and identity theft of legitimate mutual fund customers. We also believe that the rules provide greater certainty to the private sector on how to comply with the USA PATRIOT Act because they are consistent with and comparable to the rules adopted by the other federal functional regulators. Finally, in order to reduce compliance burdens, the final rule allows mutual funds flexibility to adopt CIPs and to distribute notices that are best suited to the funds' businesses and needs. These benefits are difficult to quantify. We received no data from commenters quantifying the value of these benefits.

B. Costs Associated With the Final Rule

Section 326 of the USA PATRIOT Act, and the new rule, allow for great flexibility in the development of CIPs. Differences in the ways that mutual fund accounts are opened, fund shares are distributed, and fund purchases, sales and exchanges are effected; differences in the various types of accounts maintained by mutual funds; and differences among mutual fund customer bases make it difficult to quantify accurately a universally applicable cost per mutual fund. Most mutual funds currently have some procedures in place for collecting information about and verifying the identities of their customers, and for detecting fraud in the account opening process by looking for inconsistencies in the information provided by customers and/or checking customer names against certain databases. We anticipate that the requirements of section 326 as implemented by today's rule nonetheless will impose initial, one-time costs and ongoing costs on mutual funds and fund families in connection with formulating and implementing programs that comply with today's rule, and modifying existing procedures to conform to those new programs. Initial one-time costs associated with establishment of CIPs would include: (1) The development, adoption, and implementation of a CIP; (2) the creation or modification of computer systems and account applications (both paper and web-based applications) to collect required information and disseminate required notices; (3) the modification of electronic recordkeeping systems to verify and retain the required information; and (4) personnel training. Ongoing costs for mutual funds and fund families will include: (1) Collecting the information required by the CIP; (2) verifying customers' identities; (3) determining whether customers appear on designated lists issued by federal government agencies; and (4) making and maintaining required records. As discussed above, the magnitude of these ongoing costs will, in large part, depend on the number of new accounts opened. From January 1, 1990 through December 31, 2001, approximately 16 million mutual fund accounts were opened annually.[130]

1. Costs Associated With Establishing a CIP

Program Implementation. Section 326 of the Act and the new rule require mutual funds to develop written CIPs. Based on discussions with industry representatives, the Commission estimates that it will take approximately 50 hours for a fund, or fund family, to develop a CIP at a cost of approximately $3,810.[131] Based on these assumptions, we estimate that the aggregate cost of developing CIPs will be approximately $3.4 million ($3,810 per program × 890 fund families).

We believe this is a reasonable estimate of the cost of developing and implementing CIPs. We recognize that the actual development costs associated with establishing a CIP may vary from this estimate depending upon the size of the mutual fund or fund family, the distribution channels used by the fund or fund family, the fund's customer base, number of affiliates, and the extent to which a fund or fund family relies on third parties or allocates responsibilities under its CIP. For mutual funds that delegate implementation of their CIPs to unaffiliated service providers, the burden per mutual fund may be less because those service providers will likely use the same or similar software and systems for several different registrants. Similarly, the cost per fund for funds that use a CIP developed by their fund family may be less.

Systems Modifications. The Commission anticipates that the new rule will cause individual mutual funds and mutual fund families to incur costs to modify items such as account applications and websites, to create or modify electronic links to other databases, and to modify their electronic recordkeeping systems in order to

[130] This estimate is derived from information reported in the Investment Company Institute's 2002 Mutual Fund Fact Book. It represents the net annual increase in the number of mutual fund accounts. The actual number of new accounts that were opened during this period is probably higher because this estimate is reduced by the number of accounts that were closed during the same period. No data are available regarding the number of accounts that were closed. The number of accounts with respect to which customers' identities will be required to be verified is, however, significantly lower than the aggregate number of new accounts that are created annually. A mutual fund will not be required to verify the identity of a customer who has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person. *See* note *supra* and accompanying text. A mutual fund may also, in certain circumstances, rely on the performance by another financial institution of any procedures of the mutual fund's CIP with respect to a customer. *See* notes 118–122 *supra* and accompanying text.

[131] We estimate that it will take compliance personnel 45 hours at a cost of $62 per hour, attorneys 4 hours at a cost of $130 per hour, and directors 1 hour at $500 per hour, to develop a CIP. We have revised this estimate since the proposal to more accurately reflect the hourly costs of the various types of persons who must be involved in the creation and implementation of a CIP. This estimate of the cost of developing a CIP includes the cost of the rule's requirement that the mutual fund's CIP include procedures for providing fund customers with notice that the fund is requesting information to verify their identities. A mutual fund may satisfy the notice requirement by generally notifying its customers about the procedures the fund must comply with to verify their identities. Depending on how accounts are opened, the mutual fund may post a notice on its website, or provide customers with any other form of written or oral notice.

collect, verify, and retain the required information, and to provide the required notice to customers. The cost-benefit analysis in the proposed rule did not discuss the time and costs associated with computer system modifications, but commenters suggested that these costs could be substantial. The Commission estimates, based on discussions with industry representatives, that it will cost each fund or fund family approximately $40,000 to make these types of system modifications.[132] Therefore the Commission estimates that there will be a one-time aggregate cost of approximately $36 million for these systems modifications.

2. Ongoing Costs

As mentioned above, ongoing costs for mutual funds will be associated with the need to: (1) Collect the information required by the CIPs, (2) verify customers' identities, (3) determine whether customers appear on lists provided by federal agencies, and (4) make and maintain records related to CIPs.

Information Collection. Although mutual funds generally require customers to provide a name and mailing address in order to open an account, mutual funds currently may not require all fund customers to provide all of the information required to be collected pursuant to a CIP. Moreover, mutual funds may not be collecting all such information with respect to all of the persons who will be considered to be customers for purposes of the new rule. Therefore the Commission anticipates that mutual funds will incur costs in connection with the collection of identifying information from their customers. Based on discussions with industry participants, the staff of the SEC estimates that the average time spent collecting the required information will be between one and four minutes per account and that the hourly personnel and overhead cost associated with these requirements will be $25 per hour. Therefore, the SEC staff estimates that this burden will result in an aggregate annual cost to the industry of between $6.7 million and $26.7 million.[133]

Information Verification. The new rule also requires CIPs to contain procedures for funds to verify customer identities. The rule provides funds with substantial flexibility to decide how they will verify identification information. The purpose of making the rule flexible is to give funds the ability to select verification methods that are, as section 326 requires, reasonable and practicable. The new rule allows a mutual fund to employ such verification methods as permit it to form a reasonable belief that it knows the true identities of its customers.

The rule sets forth non-exclusive lists of methods that a fund may use to verify customer identification. A fund may use other reasonable methods that are currently available, or that become available in the future. The Commission believes that verifying the identifying information could result in costs for mutual funds because some firms currently may not use verification methods. Based on discussions with industry participants, the SEC staff estimates that the total annual cost to the industry to verify the identifying information will be between $49.3 million and $98.6 million.[134]

Resolution of discrepancies. Based on discussions with industry participants, the staff of the SEC believes that initial detection of discrepancies in information collected will be automated and conducted on a batch-file basis. Once discrepancies have been detected, staff of the SEC estimates that the average time spent by compliance personnel to resolve discrepancies in information collected will be between one and four minutes per account and that the hourly personnel and overhead cost associated with these requirements will be $25 per hour. Therefore, the SEC staff estimates that this burden will result in an aggregate annual cost to the industry of between $6.7 million and $26.7 million.

Comparison with government lists of known or suspected terrorists. Section 326 and the new rule require that mutual fund CIPs include reasonable procedures for determining whether a customer's name appears on designated lists of known or suspected terrorists or terrorist organizations issued by any federal government agency. Mutual funds should already have procedures for determining whether customers' names appear on some federal government lists. There are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control (OFAC). Failure to comply with these requirements may result in criminal and civil penalties. Based on discussions with industry representatives the SEC staff estimates that the annual cost to the mutual fund industry of this requirement will be $3.4 million.[135]

Recordkeeping. The Commission believes that the recordkeeping requirement in the new rule will result in additional costs for mutual funds that currently do not maintain certain of the records for the prescribed time period. We believe that most funds already retain certain of the records required by the new rule as a matter of good business practice.

The proposed rule provided that mutual fund CIPs provide for the retention of all information for five years after a customer account is closed. The final rule bifurcates the record retention provisions so that funds will be required to retain customer identification information for five years after the account is closed, and to retain a description of (1) the documents relied upon to verify the customer's identity, (2) the methods and results of measures undertaken to verify the identity a customer and (3) the resolution of any substantive discrepancies discovered during the identity verification process for five years after the date the record was made. The SEC staff estimates, based on discussions with

[132] Based on discussions with industry representatives, SEC staff estimates that it will take compliance personnel fifteen hours, at $62 per hour ($930) to modify fund account applications in order to collect all of the required information from and provide required notice to fund customers. The SEC staff estimates that the aggregate cost of such modifications will be approximately $828,000 ($930 per fund family × 890 fund families). Based on discussions with industry representatives, the SEC staff estimates that it will take computer programmers 640 hours at $62 per hour to implement the necessary computer system modifications ($39,680). The SEC staff estimates the aggregate cost of these modifications to be $35.3 million ($39,680 per fund family × 890 fund families). Thus, the SEC staff estimates the total costs of systems modifications to be $36.1 million ($35.3 million + $828,000).

[133] We estimate that there are 16 million new mutual fund shareholder accounts created each year. Therefore, we estimate the range of cost to be between $6.7 million (16 million new accounts per year × 1/60 of an hour × $25) and $26.7 million (16 million new accounts per year × 1/15 of an hour × $25).

[134] The SEC staff believes that the processing costs associated with verification methods will be between $1.00 and $2.00 per account. The SEC staff further estimates that the average time spent verifying an account will be between five and ten minutes. The hourly cost of the person who would undertake the verification is estimated to be $25 per hour including overhead. Therefore, the estimated costs to the industry reported above are between: $49.3 million ((16 million new accounts per year) × ($1.00) + (16 million new accounts per year) × (1/12 of an hour) × ($25)) and $98.6 million ((16 million new accounts per year) × ($2.00) + (16 million new accounts per year) × (1/6 of an hour) × ($25)).

[135] Based on discussions with industry representatives, the SEC staff estimates that it takes a data entry clerk approximately 30 seconds to ascertain whether a customer's name is on a government list. We assume that for most mutual fund customers this check will be automated and conducted on a batch-file basis. Therefore we estimate that cost of this requirement is $.21 per customer (1/120 hour × $25 per hour (cost per hour of data entry)). We estimate the aggregate annual cost of this requirement to be $3.4 million ($.21 per customer × 16 million customers).

representatives of the mutual fund industry, that this recordkeeping requirement will cost $13.3 million annually.[136]

IV. Final Regulatory Flexibility Analysis

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act[137] to address concerns related to the effects of agency rules on small entities. Treasury and the Commission believed that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities.''[138] First, the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, the economic impact on mutual funds, including small entities, is imposed by the statute itself, and not by the rule. Treasury and the Commission sought comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself and not the proposed rule. Treasury and the Commission did not receive any comments in response to this request.

While Treasury and the Commission believed that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, we prepared an Initial Regulatory Flexibility Analysis that was published in the proposed rule. Therefore, a Final Regulatory Flexibility Analysis has been prepared for this final rule in accordance with 5 U.S.C. 604.

A. Need for and Objectives of the Rule

Section 326 requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds and their customers regarding the identities of customers that will apply in connection with the opening of an account at a mutual fund.[139]

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The objective of the final rule is to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. The rule seeks to achieve this goal by specifying the information mutual funds must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with mutual funds for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

B. Significant Issues Raised by Public Comment

In the proposed rule, Treasury and the Commission specifically requested public comments on any aspect of the IRFA, as well as the number of small entities that might be affected by the proposed rule. The agencies received no comments on the IRFA.

C. Small Entities Subject to the Rule

A small business or organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act, is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[140] Of approximately 3,060 registered mutual funds, approximately 158 are small entities. These 158 small entities are divided into approximately 154 fund families.[141] As discussed above in Section III, in most cases, a single customer identification program will be developed and used by all of the mutual funds in a family of funds.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rule requires a mutual fund to adopt a written CIP that, at a minimum, includes each of the following: (1) Risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable;[142] (2) procedures for maintaining records of all information obtained under its customer identity verification procedures, (3) procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by the federal government and designated by Treasury, and (4) procedures for providing notice to customers.

As noted above, the rule is not expected to have a significant economic impact on a substantial number of small entities. Commission staff estimates that developing a CIP will require approximately 50 hours of each fund or fund family developing a CIP, at a cost of approximately $3,810,[143] and that systems modification will entail approximately 655 hours at a cost of $40,610 to each fund or fund family.[144]

Although small entities will also incur ongoing costs, the Commission expects that they will not have a significant economic impact. For each new account, a fund will require what we estimate to be 1–4 minutes for collecting customer information, 5–10 minutes for verifying customer information, 1–4 minutes for resolution of discrepancies in customer information, half a minute for comparison to government lists, and 2 minutes for record retention, each at a cost of approximately $25 per hour. Small entities are likely to have a relatively small number of accounts; therefore, they will incur the ongoing costs of individual customer identifications relatively infrequently.

E. Agency Action To Minimize Effect on Small Entities

Treasury and the Commission considered significant alternatives to the proposed rule that would accomplish the stated objective, while minimizing any significant adverse impact on small

[136] The staff estimates that it will take a data entry clerk approximately two minutes per customer to maintain the records required by the rule. The staff assumes that for most mutual fund accounts performance of this requirement will be automated. The staff estimates that the cost of this requirement will be $.83 per customer (1/30 hour × $25 per hour (estimated cost per hour of data entry)). We estimate the aggregate annual cost of this requirement to be $13.3 million ($.83 per customer × 16 million new accounts per year).

[137] 5 U.S.C. 601 *et seq.*

[138] 5 U.S.C. 605(b).

[139] As discussed previously, section 326 provides that such regulations, at a minimum, must require mutual funds to implement, and customers to comply with, reasonable procedures for—(1) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (2) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and (3) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

[140] Rule 0–10 [17 CFR 27.0–10].

[141] The estimates of the number of registered mutual funds that are small entities and of the number of fund families are based on figures compiled by the Commission staff from outside databases.

[142] These procedures must specify the identifying information that the mutual fund will obtain with respect to each customer, such information to include, at a minimum, name, date of birth (for an individual), street address, and identification number.

[143] *See* note 131 *supra* regarding the cost of developing a CIP.

[144] *See* note 132 *supra* regarding the cost of systems modifications.

entities. In connection with the proposed rule, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The final rule provides for substantial flexibility in how each mutual fund may meet its requirements. This flexibility is designed to account for differences between mutual funds, including size. Nonetheless, Treasury and the Commission did consider the alternatives described above. Treasury and the Commission believe that the alternative approaches to minimize the adverse impact of the rule on small entities are not consistent with the statutory mandate of section 326. In addition, Treasury and the Commission do not believe that an exemption for small mutual funds is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of mutual funds, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

V. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[145] 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 control number. Treasury submitted the final rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506–0033.

In the proposed rule Treasury and the Commission estimated the paperwork burden that would be imposed by the rule and sought comments on the estimates. None of the commenters specifically addressed the paperwork burden associated with the rule.

A. Collection of Information Under the Final Rule

The final rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. Like the proposed rule, the final rule requires mutual funds to (1) maintain records of the information used to verify customers' identities and (2) provide notice to customers that information they supply may be used to verify their identities. These recordkeeping and disclosure requirements are required under section 326 of the Act. The final rule also contains a new recordkeeping provision—a mutual fund that relies on another financial institution to perform some or all of the elements of its CIP must obtain and retain an annual certification from the financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds to verify the identities of their customers. Furthermore, section 326 provides that the regulations must, at a minimum, require mutual funds to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The final rule requires each mutual fund to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the mutual fund is requesting information to verify their identity. The final rule requires a mutual fund to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, and the identification number of the document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained.

The final rule also requires each mutual fund to give customers ''adequate notice'' of the identity verification procedures. Depending on how an account is opened, a mutual fund may satisfy this disclosure requirement by providing customers with any form of written or oral notice. Accordingly, a mutual fund may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

The final rule permits a mutual fund to rely on performance of elements of its CIP by other financial institutions. The required contract and certification will provide mutual fund examiners with a standard means of ascertaining that the other financial institution has agreed to undertake the mutual fund's CIP requirements.

C. Respondents

The final rule will apply to approximately 3,060 mutual fund companies that are registered with the Commission.[146]

D. Total Annual Reporting and Recordkeeping Burden

1. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual burden. As adopted, the rule differs from the proposed rule in its requirements for the retention of records of information obtained under customer identification procedures. Whereas the proposed rule required that such records be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked, the final rule has two different times for the start of the five-year period for record retention: (1) The date the account is closed, for identifying information about the customer, and (2) the date the record is made, for descriptions of any documents relied on for verification of identity, of the methods and results of any measures undertaken to verify customer identity and of the resolution of any substantive discrepancy discovered when verifying identifying information.

We believe that most mutual funds already retain certain of the records required by the new rule as a matter of good business practice, but that the

[145] 44 U.S.C. 3501 *et seq.*

[146] This estimate is based on figures compiled by the Commission staff from Commission filings.

recordkeeping requirement will result in additional costs for mutual funds that do not currently maintain records for the prescribed time period. The total industry-wide burden will depend on the number of new accounts added each year. We estimate that data entry will require approximately two minutes per customer, and therefore that the annual, industry-wide burden will be approximately 533,000 hours.[147]

We believe that there is a nominal burden associated with the new recordkeeping requirement. Under the final rule, a mutual fund may rely on another financial institution to perform some or all its CIP under certain conditions, including that the financial institution must enter into a contract requiring the financial institution to certify annually to the fund that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified elements of the fund's CIP. Not all mutual funds will choose to rely on a third party. The minimal burden of retaining the certification described above should allow a mutual fund to reduce its net burden under the rule by relying on another financial institution to perform some or all of its CIP.

2. Providing Notice to Customers

The requirement for mutual funds to provide the required notice to customers regarding use of customers' information will create a one-time burden by necessitating the amendment of mutual funds' account applications, both paper and web-based. As adopted, the rule differs from the proposed rule in providing additional guidance regarding what constitutes adequate notice and on the timing of the notice requirement, and in including sample language that, if appropriate, will be deemed adequate notice to a mutual fund's customers. We estimate that the estimated 3,060 registered mutual funds will each spend approximately two hours modifying their account applications. Thus, we estimate that the industry-wide burden will be approximately 6,120 hours.

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the final rule would be provided by customers and other sources to mutual funds and maintained by mutual funds. In addition, the information may be used by federal regulators and other authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The final rule requires that the identifying information obtained about a customer be retained until five years after the date the account of the customer is closed and that other records relating to the verification of the customer be retained until five years after the record is made.

H. Request for Comment

Treasury and the Commission invite comment on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments 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 (1506–0033), 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.

VI. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Investment companies, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Securities and Exchange Commission

17 CFR Chapter II

Authority and Issuance

The Commission is adopting 17 CFR 270.0–11 pursuant to the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

■ For the reasons as set out in the preamble, title 17, part 270 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

■ 2. Section 270.0–11 is added to read as follows:

§ 270.0–11 Customer identification programs.

Each registered open-end company is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation at 31 CFR 103.131, which requires a customer identification program to be implemented as part of the anti-money laundering program required under subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. Where 31 CFR 103.131 and this chapter use different definitions for the same term, the definition in 31 CFR 103.131 shall be used for the purpose of compliance with 31 CFR 103.131. Where 31 CFR 103.131 and this chapter require the same records to be preserved for different periods of time, such records shall be preserved for the longer period of time.

By the Securities and Exchange Commission.

Dated: April 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

Treasury is adopting 31 CFR 103.131 pursuant to the authority set forth in 31 U.S.C. 5318(l).

■ For the reasons as set out in the preamble, title 31, part 103 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 3. The authority citation for part 103 continues to read as follows:

[147] Since mutual funds will not be required to comply with the requirements of this final rule until October 1, 2003, the industry-wide burden during the first year will be approximately 133,250 hours.

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, 326, 352, Pub L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

■ 4. Subpart I of part 103 is amended by adding § 103.131 to read as follows:

§ 103.131 Customer identification programs for mutual funds.

(a) *Definitions.* For purposes of this section:

(1)(i) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(ii) *Account* does not include:

(A) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(*1*) An individual who lacks legal capacity, such as a minor; or

(*2*) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(3) *Federal functional regulator* is defined at § 103.120(a)(2).

(4) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(5) *Mutual fund* means an ''investment company'' (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an ''open-end company'' (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(6) *Non-U.S. person* means a person that is not a *U.S. person.*

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States.

(b) *Customer identification program: minimum requirements.*

(1) *In general.* A mutual fund must implement a written Customer Identification Program (''CIP'') appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. The CIP must be a part of the mutual fund's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required.* (A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The mutual fund must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another federal law or regulation or federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions.* The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained,

verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

In concurrence:

By the Securities and Exchange Commission.

Dated: April 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 42

RIN 3038–AB90

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Customer Identification Programs For Futures Commission Merchants and Introducing Brokers

AGENCIES: Financial Crimes Enforcement Network, Treasury; Commodity Futures Trading Commission.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Commodity Futures Trading Commission (CFTC) are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. Section 326 requires the Secretary of the Treasury to jointly prescribe with the CFTC a rule that, at a minimum, requires futures commission merchants and introducing brokers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to futures commission merchants or introducing brokers by any government agency. This final rule applies to all futures commission merchants and introducing brokers, except for futures commission merchants and introducing brokers that register with the CFTC solely because they effect transactions in security futures products.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Futures commission merchants and introducing brokers subject to this final rule must comply with it by October 1, 2003.

FOR FURTHER INFORMATION CONTACT: *Commodity Futures Trading Commission:* Office of the General Counsel, (202) 418–5120, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; or *AMLstaff@cftc.gov.*

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the General Counsel (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Act).[1] Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' added several new provisions to the Bank Secrecy Act (BSA).[2] These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act added a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury (Secretary or Treasury) to prescribe regulations ''setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.''

Section 326 of the Act applies to all ''financial institutions.'' This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, brokers and dealers in securities, investment companies, futures commission merchants (FCMs), introducing brokers (IBs),[3] insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.[4]

The regulations implementing section 326 of the Act must require, at a minimum, financial institutions to implement reasonable customer identification procedures for: (1) Verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the CFTC jointly proposed a rule to implement section 326 of the Act with respect to FCMs and IBs.[5] Treasury and the CFTC received three comments directed to this proposal.[6] Commenters

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[1] Pub. L. 107–56.

[2] 31 U.S.C. 5311 *et seq.*

[3] Treasury has clarified that the term ''a broker or dealer in securities or commodities'' in the BSA, 31 U.S.C. 5312(a)(2)(H), includes IBs within the definition of ''financial institution.'' 67 FR 48328, 48329 n.2 (July 23, 2002); *see also* 67 FR 21110, 21111 n.5 (April 29, 2002).

[4] *See* 31 U.S.C. 5312(a)(2), 5312(c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 of the Act jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the banking agencies), the CFTC, and the Securities and Exchange Commission (SEC).

[5] Customer Identification Programs for FCMs and IBs, 67 FR 48328 (July 23, 2002) (NPRM). Treasury simultaneously published: (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks (67 FR 48290 (July 23, 2002)); (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a Federal functional regulator (67 FR 48299 (July 23, 2002)); (3) jointly with the SEC, a proposed rule applicable to broker-dealers (67 FR 48306 (July 23, 2002)); and (4) jointly with the SEC, a proposed rule applicable to mutual funds (67 FR 48318 (July 23, 2002)). Treasury, the CFTC, the SEC, and the banking agencies received approximately 500 comments in response to these proposed rules. Many of those commenters raised similar issues applicable to all the affected sectors of the financial services industry.

[6] The comment letters are available for public inspection and copying in the CFTC's Reading

Continued

were a registered futures association and two futures industry trade associations. Commenters generally supported the proposal but suggested a few revisions.

One commenter addressed the rule's definition of ''customer,'' specifically the definition's inclusion of persons with authority to effect transactions in the account. This commenter argued that the definition was overly broad and suggested that a risk-based approach be adopted instead.

Two commenters addressed the proposed rule's identity verification requirement. One commenter supported the proposed rule's framework for when verification would be required of existing customers that open new accounts. The other commenter requested clarification as to what would be considered a ''new account'' for which verification would be necessary. Both commenters suggested that the final rule text include the exception discussed in the NPRM for certain non-customer initiated transfers of accounts between FCMs.[7]

Two commenters addressed the issue of permissible reliance between FCMs and IBs that share an account relationship with respect to the performance of customer identification and verification functions. The commenters requested clarification regarding the requirement that the relied-upon firm provide a certification to the relying firm. They suggested that the relied-upon firm be allowed to provide one certification that would suffice for all customers for which the two financial institutions share an account relationship. The commenters also suggested that reliance upon non-U.S. financial institutions, particularly affiliates, be permitted as well.

One commenter addressed the proposed rule's customer notice requirement. This commenter suggested that notice should not be required of FCMs and IBs, and that if it is required, posting a notice on the firm's Internet website should be deemed sufficient for all customers.

Treasury and the CFTC have modified the proposed rule in light of these comments. It is the intent of Treasury, the CFTC, the SEC and the banking agencies that all the final rules implementing 31 U.S.C. 5318(l) be substantively identical, which approach was supported by commenters from all affected sectors of the financial services industry. Accordingly, Treasury and the CFTC also have modified the proposed rule for FCMs and IBs to maintain consistency and parallel treatment with the final rules imposing customer identification and verification requirements upon other financial institutions.[8] The section-by-section analysis that follows discusses the comments and the modifications that Treasury and the CFTC have made to the proposed rule.

C. Codification of the Joint Final Rule

The joint final rule applies to any person that is registered or required to be registered with the CFTC under the Commodity Exchange Act (CEA)[9] as either an FCM or IB, except persons who register as an FCM or IB solely for the purpose of effecting any transactions in a security futures product (SFP).[10] The substantive requirements of this joint final rule will be codified as part of Treasury's BSA regulations located in 31 CFR Part 103.[11]

As proposed, the CFTC is adding a rule in its own regulations that will cross-reference the joint rule in 31 CFR Part 103. Specifically, the CFTC is concurrently amending Chapter I of 17 CFR to add a new Part 42 and adopting a new rule in this Part, Rule 42.2 (Compliance with Bank Secrecy Act).[12] CFTC Rule 42.2 will require each FCM and IB to comply with the applicable provisions of the BSA and the implementing regulations, including 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by Treasury and the CFTC at 31 CFR 103.23, requiring customer identification and verification procedures as part of the FCM's or IB's anti-money laundering (AML) compliance program.

Final rules governing the applicability of section 326 of the Act to certain other financial institutions, including banks, thrifts, credit unions, mutual funds and securities broker-dealers, are being issued separately. Treasury, the CFTC, the SEC and the banking agencies consulted extensively in the development of all joint rules implementing section 326 of the Act. These agencies intend the effect of the final rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 of the Act for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

D. Compliance Date

Many commenters on the other proposed rules[13] requested that financial institutions be given adequate time to develop and implement the requirements of any final rule adopted under section 326 of the Act. The transition periods suggested by these commenters ranged from 60 days to two years after the publication of a final rule.

The final rule for FCMs and IBs modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the CFTC recognize that some FCMs and IBs will need time to develop and implement the customer identification program (CIP) required by the rule, because doing so may include various measures, such as training staff, reprinting forms, and programming automated systems. Accordingly, although this rule will be effective 30 days after publication, FCMs and IBs will have a transition period to implement the rule. FCMs and IBs must fully implement their CIPs under the final rule by October 1, 2003.[14]

II. The Joint Final Rule Implementing Sections 326 of the Act

A. Section-by-Section Analysis

Section 103.123(a) Definitions

Section 103.123(a)(1) Account. The proposed rule defined ''account'' as any formal business relationship with an FCM, including, but not limited to, any relationship established to effect transactions in contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity.[15]

The final rule includes certain changes to this definition. First, the reference to a ''business relationship'' has been removed from the definition of ''account.'' This change has been made to clarify that the rule applies to the FCM's provision of financial services,[16]

Room, located in Room 4072 at the CFTC's principal office at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The telephone number is (202) 418–5025. Comment letters are also available on the CFTC's Internet website at *http://www.cftc.gov/foia/comment02/foi02—009_1.htm.*

[7] *See* NPRM, 67 FR at 48330.

[8] *See supra* notes 4 and 5. Treasury and the CFTC believe that these changes either clarify or liberalize the scope of the proposed rule with respect to FCMs and IBs.

[9] 7 U.S.C. 1, *et seq.*

[10] FCMs and IBs that limit their futures business to effecting transactions in SFPs may register with the CFTC pursuant to 7 U.S.C. 6f(a)(2). These persons will be subject to the customer identification rule being issued by the SEC with respect to securities brokers or dealers.

[11] The rule will be codified at 31 CFR 103.123.

[12] 17 CFR 42.2.

[13] *See supra* note 5.

[14] The final CIP rules issued by Treasury and the other Federal functional regulators also require full implementation by October 1, 2003.

[15] *See* NPRM, 67 FR at 48337.

[16] This term is intended to operate broadly to include all financial services provided by an FCM. It would include, for example, the provision of any

as opposed to general business dealings such as those established in connection with an FCM's own operations or premises. Second, in order to clarify the covered relationships, the final rule refers to transactions in ''contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity.''

Two commenters requested that the final rule codify the ''transfer exception'' to the definition of an ''account.'' The NPRM stated that transfers of accounts from one FCM to another that are not initiated by the customer fall outside the scope of section 326 of the Act,[17] and would not be covered by the proposed rule.[18] The final rule codifies this exception [19] by excluding from the definition of ''account'' any account that an FCM acquires through an acquisition, merger, purchase of assets, or assumption of liabilities.[20]

The final rule also excludes from the definition of ''account'' those accounts that are opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to being used for the financing of terrorism and money laundering because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations imposing, among other requirements, low contribution limits and strict distribution requirements.

Section 103.123(a)(2) Commission. The proposed rule defined ''Commission'' as the United States Commodity Futures Trading Commission. There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed.

Section 103.123(a)(3) Commodity. The proposed rule defined ''commodity'' by reference to Section 1a(4) of the CEA, 7 U.S.C. 1a(4). There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed.

Section 103.123(a)(4) Contract of sale. The final rule adds a definition of ''contract of sale.'' The term is used in the definition of ''account.''[21] The final rule defines ''contract of sale'' as any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the CEA, 7 U.S.C. 1a(7).

Section 103.123(a)(5) Customer. The proposed rule defined ''customer'' to mean any person who opens a new account with an FCM, and any person granted authority to effect transactions in an account.[22] For consistency with the text of section 326 of the Act, the final rule defines ''customer'' as ''a person that opens a new account.'' Except in the case of minors and informal groups with a common interest (*e.g.*, civic clubs), this means that the ''customer'' is the person identified as the account holder, or persons in the case of a joint account. It does not refer to a person who fills out the account opening paperwork or provides information necessary to open an account, if such person is not the account holder as well. Thus, an FCM or IB is not required to look through a trust or similar account to its beneficiaries, and is required only to verify the identity of the named account holder.[23] The final rule provides for similar treatment of intermediated accounts.

As stated in the NPRM,[24] the focus of the CIP with respect to intermediated accounts will be the intermediary itself. If the intermediary is the account holder, such as in the case of an omnibus account, an FCM is not required to look through the intermediary to the underlying beneficiaries. Likewise, if the intermediary opens an account in the name of a collective investment vehicle, such as commodity pools, an FCM or IB is not required to look through the collective investment vehicle to the underlying participants.[25]

After revisiting the ''authorized person'' component of the proposed ''customer'' definition, Treasury and the CFTC have determined that requiring limited resources to be expended on verifying the identities of persons with authority over accounts could interfere with an FCM's or IB's ability to focus on customers that present a higher risk of not being properly identified. Accordingly, the final rule does not include persons with authority to effect transactions in accounts within the definition of ''customer.'' Instead, paragraph (b)(2)(ii)(C) of the final rule requires FCMs and IBs to address situations where they will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account in order to verify the customer's identity.

The definition of ''customer'' has been revised to clarify the treatment of

guarantee or clearing services provided by an FCM. It would also include an FCM's provision of financial services involving any foreign currency futures contract, option on any foreign currency futures contract, or option on a foreign currency that occurs on an off-exchange basis. *See* 7 U.S.C. 2(c)(1)–(2).

[17] Section 326 of the Act applies with respect to persons seeking to open an account at a financial institution. If a financial institution acquires an account through a non-customer initiated transaction, such as a transfer due to the insolvency of an FCM, the customer is not seeking to open an account with the financial institution.

By the same reasoning, the final rule does not, as one commenter requested, expand the ''transfer exception'' to include transfers where a customer account follows an associated person who moves from one firm to another, because such transfers are, at a minimum, undertaken with the acquiescence of the customer. Nonetheless, as discussed, *infra,* while the final rule requires that certain minimum customer information be obtained prior to opening an account, verification of the customer's identity may be done within a reasonable time before or after the account is opened.

[18] *See* NPRM, 67 FR at 48330 (discussion of definition of the term ''customer'').

[19] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for an FCM, as part of its anti-money laundering compliance program (*see, infra,* note 89 and accompanying text) to verify the identity of customers associated with accounts that it acquires from another financial institution. For example, it may be appropriate to verify transferred account holders if the accounts are coming from a financial institution that has failed to establish or maintain a CIP. Treasury and the Federal functional regulators expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

[20] This ''transfer exception'' includes bulk transfers made in accordance with CFTC Rule 1.65, 17 CFR 1.65, or as required by the CFTC's minimum financial requirements in CFTC Rule 1.17(a)(4), 17 CFR 1.17(a)(4). This exception would also cover transfers of accounts that result when an IB changes its introducing relationship from one FCM to another. For customers that open accounts after the transfer, however, the IB and the new FCM would need to meet the requirements in paragraph (b)(6) (including entering into a contract and providing certifications) to the extent they intend to rely on each other to undertake CIP requirements with respect to these customers.

[21] *See* final rule, 103.123(a)(1).

[22] See NPRM, 67 FR at 48337.

[23] However, as discussed below, under paragraph (b)(2)(ii)(C) of the final rule, an FCM or IB, based on its risk-assessment of a new account, may need to take additional steps to verify the identity of a non-individual, such as obtaining information about persons with control over the account. In addition, the due diligence procedures required under other provisions of the BSA or the futures laws may require FCMs and IBs to look through to owners of certain types of accounts.

[24] *See* NPRM, 67 FR at 48331.

[25] This is not because the FCM or IB is relying upon the intermediary to perform its required due diligence. It is because under the final rule, FCMs and IBs are required only to verify the identity of their customers, and when an intermediary opens an account in its own name (or in the name of its collective investment vehicle), the intermediary (or collective investment vehicle) is the firm's ''customer.''

By contrast, if an intermediary were to open an account not in its own name (or the name of a collective investment vehicle) but in the name of its client, then under the final rule the FCM's or IB's customer would be the client. In this situation, the FCM or IB may indeed seek to rely upon the intermediary for performance of its CIP procedures with respect to these shared customers. *See* discussion *infra* regarding final rule, 103.123(b)(6) (reliance on other financial institutions).

accounts for an individual who lacks legal capacity (such as a minor) and accounts for an entity that is not a legal person (such as informal groups with a common interest, which includes civic clubs).[26] In the case of a minor child or informal group, the ''customer'' for purposes of the rule is the individual who undertakes to open the account in the name of the minor or group. Generally, this will be the person who fills out the account opening paperwork and provides the information necessary to open the account in the name of the minor or group.

In order to make the rule less burdensome, the final rule excludes from the definition of ''customer'' certain readily identifiable entities, including: (1) Financial institutions regulated by a Federal functional regulator; (2) banks regulated by a state bank regulator; and (3) persons described in § 103.22(d)(2)(ii)–(iv), which includes entities such as governmental agencies and instrumentalities and companies that are publicly traded.[27] The definition of ''customer'' also excludes a person who has an existing account, provided that the FCM or IB has a reasonable belief that it knows the true identity of the person.[28]

Finally, the proposed definition of ''customer'' stated that when an account is introduced to an FCM by an IB, the person or individual opening the account shall be deemed to be a customer of both the FCM and the IB. There were no comments on this portion of the definition, and Treasury and the CFTC have adopted it as proposed.[29]

Section 103.123(a)(6) Federal functional regulator. The final rule adds a definition of ''Federal functional regulator.'' The term is used in the revised definition of ''customer'' and in a new provision allowing FCMs and IBs to rely on certain other financial institutions to perform procedures of their CIPs.[30] The final rule defines ''Federal functional regulator'' by reference to § 103.120(a)(2).

Section 103.123(a)(7) Financial institution. The final rule adds a definition of ''financial institution.'' The term is used in the revised definition of ''customer'' and in a new provision allowing FCMs and IBs to rely on certain other financial institutions to perform procedures of their CIPs.[31] This new definition cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of ''financial institution'' than that in 31 CFR 103.11, and includes entities such as FCMs.

Section 103.123(a)(8) FCM. The proposed rule defined ''FCM'' as any person registered or required to be registered as an FCM with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA solely to effect transactions in SFPs. There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed.

Section 103.123(a)(9) IB. The proposed rule defined ''IB'' as any person registered or required to be registered as an IB with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA solely to effect transactions in SFPs. There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed with the addition of a U.S.C. citation for section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

Section 103.123(a)(10) Option. The final rule adds a definition of ''option.'' The term is used in the definition of ''account.''[32] The final rule defines ''option'' as an agreement, contract or transaction described in Section 1a(26) of the CEA, 7 U.S.C. 1a(26).

Section 103.12(a)(11) Taxpayer identification number. The proposed rule defined ''taxpayer identification number'' (TIN) by reference to the provisions of section 6109 of the Internal Revenue Code of 1986 and the regulations of the Internal Revenue Service (IRS) promulgated thereunder. There were no comments on the definition, and Treasury and the CFTC have adopted it substantially as proposed.

Section 103.123(a)(12) U.S. Person and § 103.123(a)(13) Non-U.S. person. The proposed rule defined ''U.S. person'' as an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States.[33] A ''non-U.S. person'' was defined as a person who did not satisfy either of these criteria.[34]

Under these definitions, an FCM or IB will not necessarily need to establish whether a potential customer is a U.S. citizen. As described in greater detail below, the FCM or IB will have to ask each customer for a U.S. TIN (social security number, employer identification number, or individual TIN). If a customer cannot provide one, the FCM or IB may then obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. There were no comments on these definitions, and Treasury and the CFTC have adopted them as proposed.

Section 103.123(b) Customer Identification Program: Minimum Requirements

Section 103.123(b)(1) In general. Treasury and the CFTC proposed to require that each FCM and IB implement a written CIP as part of its AML program required under 31 U.S.C. 5318(h),[35] and that the procedures of the CIP enable each FCM and IB to form a reasonable belief that it knows the true identity of each customer.[36] The CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including the FCM's or IB's size, location and methods of opening accounts, the types of accounts maintained and the types of transactions executed for customers, and the FCM's or IB's reliance on another FCM or IB with which it shares an account relationship.

The NPRM discussed these risk factors and explained that, although the rule would require certain minimum identifying information and suitable verification methods, FCMs and IBs should consider on an ongoing basis

[26] *See* final rule, 103.123(a)(5)(i)(B).

[27] *See* final rule,103.123(a)(5)(ii)(A)–(B). Section 103.22(d)(2)(iv) exempts such companies only to the extent of their domestic operations. Accordingly, an FCM's or IB's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

[28] The proposed rule provided for similar treatment of existing customers, however, it included this exclusion in a different paragraph of the rule. Whereas the existing customer exclusion appears in the final rule's definition of ''customer,'' this exclusion appeared in the proposed rule's paragraph detailing the required verification procedures. *Compare* 103.123(a)(5)(ii) *with* NPRM, 67 FR at 48338 (proposed 103.123(d)).

[29] Treasury and the CFTC believe that the revisions made to the definition of ''customer'' in the proposed rule address the suggestion by one commenter that a risk-based approach be taken to determining who is a customer whose identity must be verified.

[30] *See* final rule, 103.123(a)(5) and (b)(6), respectively.

[31] *Id.*

[32] *See* final rule, 103.123(a)(5).

[33] The proposed rule contained a definition of ''person'' that cross-referenced the definition in 31 CFR 103.11(z). *See* NPRM, 67 FR at 48337. Since the final rule is being codified in 31 CFR Part 103, it will incorporate the definition in § 103.11(z) without the need for a specific cross-reference. Therefore, the definition has been removed from the final rule. The definition of ''person'' in § 103.11(z) is: ''an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.''

[34] *See* NPRM, 67 FR at 48337.

[35] National Futures Association (NFA) Compliance Rule 2–9(c) sets forth minimum requirements for these AML programs.

[36] *See* NPRM, 67 FR at 48337–48338.

whether other information or methods are appropriate, particularly as they become available in the future.[37] Commenters generally supported the risk-based approach of the proposed CIP requirements.

In the final rule, paragraph (b)(1) continues to set forth the general requirement that FCMs and IBs must implement a written CIP as part of their required AML programs. It provides that the CIP should be appropriate for the FCM's or IB's size and business and that, at a minimum, it must contain the requirements set forth in paragraphs (b)(1) through (b)(5), which are discussed below. The final rule has been re-organized to be structurally consistent with the rules being issued by Treasury and the other Federal functional regulators. Thus, requirements that had been set forth in paragraphs (c) through (h) in the proposed rule are now contained in paragraphs (b)(2) through (b)(5) of the final rule to the extent they have been adopted. The rule's structure was changed in order to affirm the intent of Treasury and the Federal functional regulators that all the CIP rules impose the same requirements.

Finally, the reference to risk factors has been moved to paragraph (b)(2) of the final rule, which requires FCMs and IBs to establish identity verification procedures. This change was made to clarify that the risk factors apply only to the identity verification procedures of the CIP, and not to standard requirements, such as procedures for providing notice to customers, recordkeeping, or checking government lists, which may not vary depending upon the perceived risk.

Section 103.123(b)(2) Identity Verification Procedures

Treasury and the CFTC proposed to require that the FCMs' and IBs' CIPs include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened.[38] On the whole, commenters supported these general requirements, although they recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and Treasury and the CFTC are adopting the provisions on identity verification procedures substantially as proposed. Under the final rule, an FCM's or IB's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. Such procedures must enable the FCM or IB to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the FCM's or IB's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the FCM's or IB's size, location and customer base.

Section 103.123(b)(2)(i) Customer Information Required

The proposed rule provided that an FCM's or IB's CIP must require the firm to obtain certain identifying information about its customers, including, at a minimum: (1) Names; (2) dates of birth, for natural persons; (3) certain addresses;[39] and (4) certain identification numbers.[40] The NPRM further stated that in certain circumstances, an FCM or IB should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.[41]

Treasury and the CFTC are adopting the customer information requirements substantially as proposed, with changes to accommodate individuals who may not have a physical address. Treasury and the CFTC believe that FCMs and IBs, for the most part, already collect the information required by the rule,[42] and that this information not only is necessary for the verification process, but also serves an important law enforcement function.

Accordingly, prior to opening an account, FCMs and IBs must obtain, at a minimum, a customer's (1) Name; (2) date of birth, for an individual; (3) address; and (4) identification number.[43] The address must be: (1) For an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.

Treasury and the CFTC are adopting the identification number requirement substantially as proposed. For a customer that is a U.S. person, the identification number is a TIN (social security number, or employer identification number). For a customer that is not a U.S. person, the identification number is one or more of the following: a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This provision provides FCMs and IBs with some flexibility to choose among a variety of identification numbers that they may accept from a non-U.S. person.[44] However, the identifying information the FCM or IB accepts must enable it to form a reasonable belief that it knows the true identity of the customer.[45]

[37] *See* NPRM, 67 FR at 48331.

[38] *See* NPRM, 67 FR at 48338.

[39] The proposed rule would have required FCMs and IBs to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing addresses (if different) for a person other than a natural person. *See* NPRM, 67 FR at 48337.

[40] The proposed rule would have required FCMs and IBs to obtain: (1) for a customer that is a U.S. person, a TIN, or (2) for a customer that is not a U.S. person, a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. *See* NPRM, 67 FR at 48337.

[41] *See* NPRM, 67 FR at 48332.

[42] *See* NPRM, 67 FR at 48335 n.17. *See also* CFTC Rule 1.37(a)(1), 17 CFR 1.37(a)(1), which requires FCMs and IBs to obtain, among other things, the true name and address of the person for whom such account is carried or introduced. Although an FCM or IB can utilize the customer information that is obtained and verified under the final rule to fulfill this obligation under Rule 1.37, an FCM or IB still will need to obtain the principal occupation or business of its customers as well as the name of any other person guaranteeing or exercising trading control with respect to its customers' accounts, because these are among the additional requirements under CFTC Rule 1.37. Further, FCM and IB members of NFA will still need to comply with the additional minimum requirements in NFA Compliance Rule 2–30(c) (requires FCM and IB members to obtain from customers that are natural persons, at least the following: ''(2) The customer's current estimated annual income and net worth; (3) the customer's approximate age; and (4) an indication of the customer's previous investment and futures trading experience'').

[43] Based on an assessment of the relevant risk factors, the FCM's or IB's CIP may require a customer to provide additional information to enable the firm to form a reasonable belief that it knows the customer's true identity.

[44] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to an FCM or IB. *See* Treasury Department, ''A Report to Congress in Accordance with section 326(b) of the USA PATRIOT Act,'' October 21, 2002.

[45] Treasury and the CFTC emphasize that the rule neither endorses nor prohibits an FCM or IB from accepting information from particular types of identification documents issued by foreign governments. The FCM or IB must determine, based upon appropriate risk factors, including those discussed above, whether the information presented

Continued

The proposed rule included an exception from the requirement to obtain a TIN from a customer opening a new account.[46] The exception would have allowed an FCM or IB to open an account for a customer that has applied for, but has not yet received, an employer identification number (EIN).[47] Treasury and the CFTC are adopting an expanded version of this exception in the final rule. As proposed, the exception was limited to customers that are not natural persons.[48] On further consideration, Treasury and the CFTC have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a TIN. Treasury and the CFTC also have modified the exception to reduce the recordkeeping burden. The proposed rule would have required an FCM or IB to retain a copy of the customer's application for a TIN.[49] The FCM's or IB's CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the TIN within a reasonable period of time after the account is opened. The final rule permits the FCM or IB to exercise discretion in determining how to confirm that a customer has filed an application.

Section 103.123(b)(2)(ii) Customer Verification

Treasury and the CFTC proposed to require that an FCM's or IB's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.[50] Treasury and the CFTC also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened. The NPRM stated that an FCM or IB need not establish the accuracy of each piece of identifying information if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.[51] The NPRM also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner.[52]

The sole commenter on this aspect of the proposed rule suggested that the rule should require verification each time the customer opens a new type of account, and not each time the customer establishes a different account at the FCM to trade the same type of product. As discussed above, however, the definition of ''customer'' in the final rule has been changed to exclude persons who have an existing account, provided the FCM or IB has a reasonable belief that it knows the customer's true identity. Accordingly, FCMs and IBs will not be required to verify the identities of such persons, which may include persons who open successive accounts of either the same type or multiple types to trade either the same or different products.

The final rule adopts the customer verification requirements substantially as proposed. The final rule requires that an FCM's or IB's CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time before or after the account is opened. As stated in the NPRM, FCMs and IBs must reasonably exercise the flexibility to undertake verification before or after an account is opened.[53] The appropriate amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in person, and the type of identifying information that is available.[54]

Although the location of the provision has been moved, the final rule continues to require that an FCM's or IB's CIP include procedures that describe when the firm will use documents, non-documentary methods, or a combination of both to verify customer identities.[55] Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the FCM's or IB's assessment of the relevant risk factors.

Section 103.123(b)(2)(ii)(A) Customer Verification—Through Documents

Treasury and the CFTC proposed to require that an FCM's or IB's CIP describe documents that the firm will use to verify a customer's identity. There were no comments directly addressing the documentary verification provisions of the proposed rule, and the final rule adopts the documentary verification provisions substantially as proposed. Specifically, the final rule requires an FCM's or IB's CIP to contain procedures that set forth the documents that the firm will use to verify a customer's identity. Each FCM or IB will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify the true identities of its customers.

In light of recent increases in identity theft and the availability of fraudulent documents, Treasury and the CFTC believe that the value of documentary verification is enhanced by redundancy. Treasury and the CFTC encourage each FCM and IB to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows its customer's true identity. Moreover, Treasury and the CFTC encourage FCMs and IBs to use a variety of methods to verify the identity of a customer, especially when it does not have the ability to examine original documents. The final rule continues to include, without significant change, an illustrative list of identification documents. For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport.[56] For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.[57] An FCM or IB may use other documents,[58] provided they allow the firm to form a

by a customer is reliable. Treasury and the CFTC recognize that a foreign business or enterprise may not have an identification number. Therefore the final rule notes that when opening an account for such a customer, the FCM or IB must request alternative government-issued documentation certifying the existence of the business or enterprise.

[46] *See* NPRM, 67 FR at 48337–48338.

[47] This position is analogous to that in regulations issued by the IRS concerning ''awaiting—TIN certificates.'' The IRS permits a taxpayer to furnish an ''awaiting—TIN certificate'' in lieu of a TIN to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.,* interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)–3.

[48] In the NPRM, Treasury and the CFTC explained that the exception was for businesses that may need to open an account before they receive an EIN from the IRS. *See* NPRM, 67 FR at 48332–48333.

[49] *See* NPRM, 67 FR at 48338.

[50] *Id.*

[51] *See* NPRM, 67 FR at 48333.

[52] *Id.*

[53] *See* NPRM, 67 FR at 48333.

[54] An FCM or IB member of NFA would violate CFTC Rule 1.37 and NFA Compliance Rule 2–30, however, if it allowed a natural person to transact business before obtaining specified information about the individual's true identity. Moreover, an FCM or IB must also comply with Treasury's Office of Foreign Asset Control's (OFAC) regulations prohibiting transactions involving designated foreign countries or their nationals. *See* 31 CFR Part 500.

[55] *See* final rule, 103.123(b)(2)(ii).

[56] *See* final rule, 103.123(b)(2)(ii)(A)(*1*).

[57] *See* final rule, 103.123(b)(2)(ii)(A)(*2*).

[58] The list of documents in the rule is meant to be illustrative. Other documents, such as trust certificates and legal opinions, also may be appropriate for verification.

reasonable belief that it knows the true identity of the customer.

In addition to the risk factors described in paragraph (b)(2), the FCM or IB should take into consideration the problems associated with authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the FCM or IB knows the true identity of the customer, and may require the use of non-documentary methods of verification in addition to documents.

Once an FCM or IB verifies the identity of a customer through a document, such as a driver's license or passport, it is not required to take steps to determine whether the document has been validly issued. An FCM or IB generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the FCM or IB must consider that in determining whether it can form a reasonable belief that it knows the customer's true identity.

Section 103.123(b)(2)(ii)(B) Customer Verification—Through Non-documentary Methods

Treasury and the CFTC proposed to require that an FCM's or IB's CIP describe the non-documentary methods the firm would use to verify customers' identities and when the firm would use these methods in addition to, or instead of, relying on documents.[59] Treasury and the CFTC explained that the proposed rule would allow the exclusive use of non-documentary methods because some accounts are opened by telephone, by mail, or over the Internet.[60] Treasury and the CFTC also noted that, even if a customer presents identification documents, it still might be appropriate to use non-documentary verification methods as well.

The proposed rule provided examples of non-documentary verification methods that an FCM or IB may use. In the NPRM, Treasury and the CFTC observed that FCMs and IBs may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.[61]

Treasury and the CFTC proposed to require FCMs and IBs to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the FCM or IB is presented with unfamiliar documents to verify the identity of a customer; or (3) the FCM or IB does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the FCM or IB will be unable to verify the true identity of a customer through documents.[62] Treasury and the CFTC recognize that there are many scenarios and combinations of risk factors that FCMs and IBs may encounter, and they have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity.

There were no comments specifically regarding the non-documentary verification provisions of the proposed rule, and thus the final rule adopts them substantially as proposed. Under the final rule, an FCM or IB relying on non-documentary verification methods must describe them in its CIP. The final rule includes an illustrative list of non-documentary verification methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database,[63] or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.[64] As Treasury and the CFTC stated in the NPRM, FCMs and IBs may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.[65]

The final rule also includes a list, again similar to that in the proposal, of circumstances that may require the use of non-documentary verification procedures.[66] Specifically, an FCM's or IB's non-documentary procedures must address situations in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the FCM or IB is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances presented increase the risk that the FCM or IB will be unable to verify the true identity of a customer through documents.

As explained in the NPRM,[67] because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the CFTC encourage FCMs and IBs to use non-documentary methods even when the customer has provided identification documents.

Section 103.123(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described above, Treasury and the CFTC proposed to require verification of the identity of any person authorized to effect transactions in a customer's account. Commenters objected to this requirement, and it has been omitted from the final rule. For the reasons discussed below, however, the final rule does require that an FCM's or IB's CIP address the circumstances in which it will obtain information about such individuals in order to verify a customer's identity.

Treasury and the CFTC believe that, while FCMs and IBs may be able to verify the identity of the majority of customers through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that an FCM or IB will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. Treasury and the CFTC believe that, in order to identify customers that pose a heightened risk of not being properly identified, an FCM's or IB's CIP must prescribe additional measures that may be used to obtain

[59] *See* NPRM, 67 FR at 48338.

[60] *See* NPRM, 67 FR at 48333.

[61] *See* NPRM, 67 FR at 48334.

[62] *See* NPRM, 67 FR at 48338.

[63] The specific types of databases that would be suitable for verification ultimately will depend on the circumstances and the FCM's or IB's assessment of the relevant risk factors.

[64] *See* final rule, 103.123(b)(ii)(B)(1).

[65] *See* NPRM, 67 FR at 48334.

[66] *See* final rule, 103.123(b)(ii)(B)(2).

[67] *Id.*

information about the identities of the individuals associated with the customer when standard documentary or non-documentary verification methods prove to be insufficient.

The final rule, therefore, includes a new provision requiring that the CIP address situations in which, based on the FCM's or IB's risk assessment of a new account opened by a customer that is not an individual, the firm also will obtain information about individuals with authority or control over the account (*e.g.,* persons authorized to effect transactions in the account) in order to verify the customer's identity. This additional verification method applies only when the FCM or IB cannot adequately verify the customer's identity after using the documentary and non-documentary verification methods described above.[68]

Section 103.123(b)(2)(iii) Lack of Verification

Treasury and the CFTC proposed to require that an FCM's or IB's CIP include procedures for responding to circumstances in which the firm cannot form a reasonable belief that it knows the true identity of the customer.[69] Treasury and the CFTC explained in the NPRM that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional trading.[70] Treasury and the CFTC also explained that there should be guidelines for when an account will not be opened (*e.g.,* when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.[71]

There were no comments on this aspect of the proposed rule, and Treasury and the CFTC have adopted the provision substantially as proposed. The final rule, however, adds a description of the recommended features of these procedures, similar to the features that were described in the NPRM. Thus, the final rule provides that the CIP's procedures should describe: (1) When an account should not be opened; (2) the terms under which a customer may conduct transactions while the FCM or IB attempts to verify the customer's identity; (3) when the FCM or IB should file a suspicious activity report (SAR) in accordance with applicable law and regulation;[72] and (4) when an account should be closed, after attempts to verify a customer's identity have failed.

Section 103.123(b)(3) Recordkeeping

Section 103.123(b)(3)(i) Required Records. Treasury and the CFTC proposed to require that CIPs of FCMs and IBs include certain recordkeeping procedures.[73–74] First, the proposed rule would have required that an FCM or IB maintain a record of the identifying information provided by customers. Second, if an FCM or IB relied on a document to verify a customer's identity, the proposed rule would have required the firm to maintain a copy of the document. Third, the proposed rule would have required FCMs and IBs to record the methods and results of any additional measures undertaken to verify the identity of customers. Finally, the proposed rule would have required FCMs and IBs to record the resolution of any discrepancy in the identifying information obtained.

Although there were no comments on this aspect of the proposed rule, Treasury and the CFTC have reconsidered and modified the recordkeeping requirements of the rule based on comments received with respect to the parallel recordkeeping provisions in the proposed CIP rules jointly issued by Treasury and the other Federal functional regulators. The final rule provides that an FCM's or IB's CIP must include procedures for making and maintaining records related to verifying the identities of customers. However, the final rule is more flexible than the proposed rule in this regard.

Under the final rule, FCMs and IBs still must make a record of all identifying information obtained about each customer. However, rather than requiring that copies of verification documents be maintained, the final rule requires that an FCM's or IB's records include a description of any document that the firm relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any. With respect to non-documentary verification, the final rule requires the records to include a description of the non-documentary methods and the results of any additional measures undertaken to verify the identity of the customer. The final rule also requires a description of the resolution of any ''substantive discrepancy'' discovered when verifying the identifying information obtained. This is intended to make clear that a record would not have to be made in the case of a minor discrepancy, such as one that might be caused by typographical mistakes.

Section 103.123(b)(3)(ii) Record Retention

Treasury and the CFTC proposed to require that an FCM or IB retain all required records for five years after the account is closed.[75] Although there were no comments on this aspect of the proposed rule, commenters on the other Federal functional regulators' proposed CIP rules expressed concern regarding this requirement as costly and overly burdensome, particularly with respect to the length of time that certain records would need to be retained and the requirement that financial institutions retain copies of the documents used to verify customer identities. The final rules adopted by Treasury and the Federal functional regulators address many of these concerns.

Treasury and the Federal functional regulators have, in the final rules, eliminated the requirement that a financial institution retain copies of documents used to verify customer identities. Treasury and the Federal functional regulators also believe that, while the identifying information provided by customers should be retained as proposed, there is little value in requiring financial institutions to retain the remaining records for five years after an account is closed, because this information is likely to grow stale. Therefore, the final rule prescribes a bifurcated record retention schedule that is consistent with a general five-year retention requirement.

Under the final rule, an FCM or IB must retain the information obtained about a customer pursuant to paragraph (b)(3)(i)(A) (*i.e.*, all minimum identifying information obtained under (b)(2)(ii)(A)) for five years after the date the account is closed.[76] The remaining records required under paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, descriptions of: any document relied upon to verify identity; methods and results of any measure taken to verify identity; and the resolution of each substantive discrepancy discovered

[68] An FCM or IB need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity after using standard documentary and non-documentary verification methods.

[69] *See* NPRM, 67 FR at 48338.

[70] *See* NPRM, 67 FR at 48334.

[71] *Id.*

[72] FinCEN has not yet published a rule requiring FCMs and IBs to report suspicious activities. These firms may, however, voluntarily file SARs with FinCEN to report suspicious activities.

[73–74] *See* NPRM, 67 FR at 48338.

[75] *See* NPRM, 67 FR at 48338.

[76] The Secretary has determined that the records required to be retained under section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

when verifying the identifying information obtained) need only be retained for five years after the record is made. The final rule continues to provide that in all other respects, these records shall be maintained in accordance with the provisions of the CFTC's recordkeeping rule 1.31.[77]

Section 103.123(b)(4) Comparison With Government Lists

Treasury and the CFTC proposed to require that an FCM's or IB's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any Federal government agency and made available to the firm.[78] In addition, the proposed rule provided that FCMs and IBs must follow all Federal directives issued in connection with such lists.

Although there were no comments on this aspect of the proposed rule, commenters on the other Federal functional regulators' proposed CIP rulemakings raised a number of concerns regarding this provision. Some commenters were concerned about how a financial institution would be able to determine what lists should be checked and how these lists would be made available. Other commenters suggested that all such lists be consolidated or provided through a designated government agency, such as FinCEN, that would serve as a clearinghouse. Still other commenters suggested that the rule should allow for the lists to be checked after an account is opened.

The final rule provides that an FCM's or IB's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that FCMs and IBs must check. However, FCMs and IBs will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, they will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

Treasury and the CFTC have modified the proposed rule to provide that the CIP's procedures must require the FCM or IB to determine whether a customer appears on a list ''within a reasonable period of time'' after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list. The final rule also requires an FCM's or IB's CIP to include procedures that require the firm to follow all Federal directives issued in connection with such lists. Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.[79]

Section 103.123(b)(5) Customer Notice

Treasury and the CFTC proposed to require that an FCM's or IB's CIP include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.[80] The NPRM stated that an FCM or IB could satisfy that notice requirement by generally notifying its customers about the firm's verification procedures.[81] It also stated that if an account is opened electronically, such as through an Internet website, the FCM or IB could provide notice electronically.[82]

Section 326 of the Act provides that the regulations issued ''shall at a minimum, require financial institutions to * * * [give] customers * * * adequate notice'' of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires an FCM's or IB's CIP to include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.

The final rule contains additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule provides that notice is adequate if the FCM or IB describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. The final rule also provides that, depending on how an account is opened, an FCM or IB may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice.[83] In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to an FCM's or IB's customers when provided in accordance with the requirements of the final rule.

Section 103.123(b)(6) Reliance on Other Financial Institutions

In the proposed rule, Treasury and the CFTC included as a risk factor an FCM's or IB's reliance on another FCM or IB to perform procedures of its CIP.[84] In the NPRM, Treasury and the CFTC stated that this would require an assessment of whether the FCM or IB can rely on another FCM or IB, with which it shares an account relationship, to undertake any of the steps required by the firm's CIP with respect to the shared account.

Treasury and the CFTC have expanded the reliance provision of the proposed rule in recognition that there may be circumstances in which an FCM or IB should be able to rely on the performance by another financial institution of some or all of the elements of the firm's CIP. The final rule provides that an FCM's or IB's CIP may include procedures that specify when the firm will rely on the performance by another financial institution (including an affiliate) of any procedures of the firm's CIP, and thereby satisfy the FCM's or IB's obligations under the rule. Reliance is permitted if a customer of the FCM or IB is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for an FCM or IB to rely on the other financial institution: (1) Such reliance must be reasonable under the circumstances; (2) the other financial institution must be subject to a rule implementing the AML compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator, and (3) the other financial institution must enter into a contract requiring it to certify annually to the FCM or IB that it has implemented an AML program and that it will perform (or its agent will perform) the specified requirements of

[77] 17 CFR 1.31.

[78] *See* NPRM, 67 FR at 48338.

[79] This is not to say, however, that FCMs and IBs do not have obligations under other laws to screen their customers against government lists. For example, FCMs and IBs should already have AML compliance programs in place to ensure they comply with OFAC's rules. *See supra* note 54; *see* also OFAC's *Foreign Assets Control Regulations For The Securities Industry (http://www.ustreas.gov/offices/enforcement/ofac/regulations/t11facsc.pdf).*

[80] *See* NPRM, 67 FR at 48338.

[81] *See* NPRM, 67 FR at 48334.

[82] *Id.*

[83] One commenter suggested that a firm's posting of the required notice on its Internet Web site should be deemed sufficient notice for all customers, regardless of how any particular account is opened. Because such posting would not ensure that every customer would be able to view the notice before opening an account, Treasury and the CFTC do not believe that this approach would satisfy the statutory requirement of section 326 of the Act.

[84] *See* NPRM, 67 FR at 48331–48332.

the FCM's or IB's CIP.[85] The contract and certification will provide a standard means for an FCM or IB to demonstrate the extent to which it is relying on another financial institution to perform its CIP, and that the other institution has, in fact, agreed to perform those functions.[86] If it is not clear from these documents, an FCM or IB must be able to otherwise demonstrate when it is relying on another financial institution to perform its CIP with respect to a particular customer.

An FCM or IB will not be held responsible for the failure of the other financial institution to fulfill adequately the FCM's or IB's CIP obligations, provided that the FCM or IB can establish that its reliance was reasonable and that it has the requisite contracts and certifications. Treasury and the CFTC emphasize that the FCM or IB and the other financial institution upon which it relies must satisfy all the conditions for reliance set forth in the final rule. If they do not, then the FCM or IB remains solely responsible for applying its own CIP to each customer in accordance with the rule.

This reliance provision of the final rule does not affect the ability of an FCM or IB to contractually delegate the implementation and operation of its CIP procedures to a service provider. Nor does the final rule alter an FCM's or IB's ability to use an agent to perform services on its behalf. Treasury and the CFTC note, however, that in contrast to the reliance provision in the rule, in these situations the FCM or IB remains solely responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP, assesses its effectiveness, and ensure that examiners are able to obtain information and records relating to the CIP.[87]

All of the Federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the Federal functional regulators expect to share information and cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the reliance provision of the rule.

Section 103.123(c) Exemptions

The proposed rule provided that the CFTC, with the concurrence of the Secretary, may exempt any FCM or IB that registers with the CFTC or any type of account from the requirements of the rule. It excluded from this exemptive authority FCMs or IBs that register pursuant to section 4f(a)(2) of the CEA solely because they deal in transactions involving SFPs. The exemptive authority with respect to these firms will be in the final rule issued jointly by Treasury and the SEC for securities broker-dealers. There were no comments on this provision of the proposed rule, and Treasury and the CFTC have adopted it substantially as proposed.

Section 103.123(d) Other Requirements Unaffected

The final rule adds a provision stating that nothing in § 103.123 shall relieve an FCM or IB of its obligation to comply with any other provision of Part 103, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction. A parallel provision similarly has been included in the final CIP rules issued by Treasury and the other Federal functional regulators.

B. Requirement for CIP Approval Removed

The NPRM required that the CIP be approved by the FCM's or IB's board of directors, managing partners, board of managers or other governing body performing similar functions, or by a person or persons specifically authorized by such bodies to approve the CIP.[88] The final rule requires the CIP to be a part of the overall AML program required of FCMs and IBs under 31 U.S.C. 5318(h). NFA Compliance Rule 2–9(c) requires these AML programs to be approved in writing by a member of the FCM's or IB's senior management.[89]

Treasury and the CFTC have omitted the approval requirement from the final rule because it is unnecessary given the approval requirements for AML programs set forth in NFA Compliance Rule 2–9(c). Treasury and the CFTC note, however, that an FCM or IB with an approved AML program must nonetheless obtain approval of a new CIP because it would constitute a material change to the AML program.

III. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* (1994 & Supp. II 1996), requires Federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The rules adopted herein would affect FCMs and IBs. The CFTC has previously established certain definitions of ''small entities'' to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[90] The CFTC has previously determined that FCMs are not small entities for the purposes of the RFA. With respect to IBs, the CFTC has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule.[91]

In this regard, the rules being adopted herein would not require any IB significantly to change its current method of doing business. As noted in the NPRM, Treasury and the CFTC believe that IBs already obtain from their customers most, if not all, of the information required under the proposed rule.[92] In addition, FCMs and IBs already must have AML programs that include procedures for customer identification and verification. The flexibility incorporated into the final rule also will permit each IB to tailor its CIP to fit its own size and needs. As a result, Treasury and the CFTC believe that expenditures associated with establishing and implementing a CIP should be commensurate with the size of the firm. If an IB is small, with a limited number of customers, the burden to comply with the rule should

[85] As discussed in the NPRM, the required contractual commitments in the case of shared accounts involving FCMs and IBs may be made a part of an introducing agreement (in the context of introduced business) or a give-up agreement (in the context of give-up business). *See* NPRM, 67 FR at 48332. And as urged by one commenter, the required annual certification under the final rule may cover all customers for which the two financial institutions share an account relationship, and need not be on a customer-by-customer basis.

[86] FCMs and IBs must obtain annual certifications acknowledging performance of CIP functions from financial institutions that are affiliates as well as those that are non-affiliates. This requirement maintains parity with the CIP rule applicable to securities broker-dealers, many of which are dually registered as FCMs.

[87] Two commenters suggested that the final rule should allow FCMs and IBs to rely upon foreign financial institutions in general, and foreign affiliates in particular to perform CIP procedures. Such a liberalization of the rule, however, could undermine the purpose of the Act in combating international money laundering and the financing of terrorism. Accordingly, the final rule permits reliance only on a financial institution that is subject to a rule requiring an AML program under the Act and that is regulated by a Federal functional regulator, which will exclude foreign entities.

This does not prevent an FCM or IB from utilizing a foreign affiliate or other foreign financial institution to perform procedures of its CIP. Rather, it means only that the FCM's or IB's relationship with the foreign firm will be treated the same as if the firm contractually delegated the implementation and operation of its CIP procedures to a service provider.

[88] *See* NPRM, 67 FR at 48338.

[89] Compliance with NFA Compliance Rule 2–9(c) is deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1). *See* 31 CFR 103.120(c).

[90] 47 FR 18618–21 (Apr. 30, 1982).

[91] *Id.* at 18618–21.

[92] *See* NPRM, 67 FR at 48335 n.17.

be *de minimis*. This position is consistent with the views of one trade association commenter that characterized the expected additional costs for IBs to comply with this new rule as ''insubstantial.''

Accordingly, pursuant to 5 U.S.C. 605(b), Treasury and the CFTC certify that the action taken herein will not have a significant economic impact on a substantial number of small entities. In this regard, Treasury and the CFTC note that they did not receive any comments expressing concern regarding the implications of the rule for small entities.

B. Paperwork Reduction Act

The collections of information in this rule have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1506–0022. 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 control number.

Neither Treasury nor the CFTC received any comments on any potential paperwork burden associated with the NPRM. Treasury and the CFTC did receive comments concerning the information that would be collected under the proposed rule. The final rule, which addresses these concerns among others, reduces the paperwork burden of the rule as proposed.[93]

Comments on the burden, and suggestions for how to further reduce it, may 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 (1506–0022), 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.

C. Cost-Benefit Analysis

Section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its action before issuing a new rule. The CFTC understands that, by its terms, section 15(a) does not require the CFTC to quantify the costs and benefits of a new rule or to determine whether the benefits of the rule outweigh its costs. Nor does it require that each rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the CFTC to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that the costs and benefits of the rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The NPRM contained an analysis of the CFTC's consideration of these costs and benefits and solicited public comment thereon.[94] The CFTC invited commenters to submit any data that they might have to assist in quantifying the costs and benefits of the proposed rules. The CFTC did not receive any such data or related comments.

After considering the costs and benefits of the proposed rules, the CFTC has decided to adopt these rules, with revisions as discussed above.

D. Executive Order 12866

Treasury has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects

17 CFR Part 42

Anti-money laundering, Brokers, Reporting and recordkeeping requirements, Terrorist financing.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

[93] *See* NPRM, 67 FR at 48335.

[94] *See* NPRM, 67 FR at 48336–48337.

Commodity Futures Trading Commission

17 CFR Chapter I

Authority and Issuance

■ For the reasons articulated in the preamble, the CFTC amends chapter I of title 17 of the Code of Federal Regulations by adding a new part 42 to read as follows:

PART 42—ANTI-MONEY LAUNDERING, TERRORIST FINANCING

Subpart A—General Provisions

Sec.
42.1 [Reserved]
42.2 Compliance with Bank Secrecy Act

Authority: 7 U.S.C. 1a, 2, 5, 6, 6b, 6d, 6f, 6g, 7, 7a, 7a–1, 7a–2, 7b, 7b–1, 7b–2, 9, 12, 12a, 12c, 13a, 13a–1, 13c, 16 and 21; 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312–314, 319, 321, 326, 352, Pub. L. 107–56, 115 Stat. 307.

Subpart A—General Provisions

§ 42.1 [Reserved]

§ 42.2 Compliance with Bank Secrecy Act.

Every futures commission merchant and introducing broker shall comply with the applicable provisions of the Bank Secrecy Act and the regulations promulgated by the Department of the Treasury under that Act at 31 CFR Part 103, and with the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Commission and the Department of the Treasury at 31 CFR 103.123, which require that a customer identification program be adopted as part of the firm's Bank Secrecy Act compliance program.

Dated: April 28, 2003.

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

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, 326, 352, Pub L. 107–56, 115 Stat. 307.

■ 2. Subpart I of part 103 is amended by adding § 103.123 to read as follows:

§ 103.123 Customer identification programs for futures commission merchants and introducing brokers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity.

(ii) *Account* does not include:

(A) An account that the futures commission merchant acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Commission* means the United States Commodity Futures Trading Commission.

(3) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(4) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(5)(i) *Customer* means:

(A) A person that opens a new account with a futures commission merchant; and

(B) An individual who opens a new account with a futures commission merchant for:

(*1*) An individual who lacks legal capacity; or

(*2*) An entity that is not a legal person.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(iii) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a *customer* of both the futures commission merchant and the introducing broker for the purposes of this section.

(6) *Federal functional regulator* is defined at § 103.120(a)(2).

(7) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(8) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(9) *Introducing broker* means any person registered or required to be registered as an introducing broker with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(10) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

(11) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(12) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(13) *Non-U.S. person* means a person that is not a *U.S. person.*

(b) *Customer identification program: minimum requirements*—(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (b)(2) of this section.

(i)(A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to

obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

Important Information About Procedures For Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the Commission or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: April 28, 2003.

In concurrence:

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

[FR Doc. 03–11016 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P; 6351–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Financial Crimes Enforcement Network; Customer Identification Programs for Certain Banks Lacking a Federal Functional Regulator

AGENCY: The Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the Act) for certain banks lacking a federal functional regulator. The notice would extend to these banks the same section 326 rules as apply both to banks with a federal functional regulator and to credit unions, trust companies, and private banks lacking a federal functional regulator.

DATES: Written comments on the proposed rule may be submitted on or before June 23, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail or fax comments. Comments should be sent by one method only.

Comments may be mailed to FinCEN, Section 326 Certain Credit Union and Trust Company Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption ''Attention: Section 326 for Certain Banks Rule Comments'' in the body of the text. 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 the Chief Counsel (FinCEN), (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed the Act (Pub. L. 107–56) into law. Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations ''setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution. Under section 326, the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Proposed Amendment to 31 CFR 103.121

On July 23, 2002, FinCEN and the federal bank regulators jointly issued a proposed rule [1] under section 326 applicable to banks, as defined in 31 CFR 103.11(c), that have a federal functional regulator. At the same time, FinCEN issued a proposed rule under section 326 applicable to credit unions, private banks, and trust companies lacking a federal functional regulator.[2] Elsewhere in today's issue of the **Federal Register**, FinCEN and the federal bank regulators are adopting a final rule, 31 CFR 103.121, based on those proposals. The final rule applies to banks with a federal functional regulator and to credit unions, trust companies, and private banks without a federal functional regulator.

FinCEN believes that 31 CFR 103.121 should apply to all banks regardless of their regulator. For that reason, this notice of proposed rulemaking would amend the final rule to extend its application to all banks without a federal functional regulator. In particular, the proposal would amend 31 CFR 103.121 by revising paragraph (a)(2)(ii) to read ''A bank, as set forth in § 103.11(c), that does not have a Federal functional regulator.'' [3]

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

II. Regulatory Flexibility Act

FinCEN certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*), that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule merely extends to all banks without a federal functional regulator the customer identification program requirements in 31 CFR 103.121, which currently apply to banks with a federal functional regulator and to credit unions, private banks, and trust companies without a federal functional regulator.

The customer identification program requirements of 31 CFR 103.121 closely parallel the requirements for customer identification programs mandated by section 326 of the Act. Moreover, FinCEN believes that banks already have implemented prudential business practices and anti-money laundering programs that involve the key controls that would be required in a customer identification program under 31 CFR 103.121. First, all banks already undertake extensive measures to verify the identity of their customers as a matter of good business practice.

Second, banks are already required by other provisions to check lists of known or suspected terrorists and should already have appropriate compliance programs in place. For example, banks are prohibited from engaging in transactions involving certain foreign countries or their nationals under rules issued by the Office of Foreign Assets Control (OFAC). *See* 31 CFR part 500. Banks should already have compliance programs in place to ensure that they do not violate OFAC rules. FinCEN understands that many banks, including small banks, have instituted programs to

[1] *See* 67 FR 48290. For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Federal bank regulators, the SEC, and the CFTC (the Federal functional regulators).

[2] *See* 67 FR 48299.

[3] The amendment will close a potential loophole so that all similarly situated entities that are banks under the BSA rules and subject only to state supervision must comply with 31 CFR 103.121 whether or not they fall within the categories of credit unions, private banks, or trust companies.

check other lists provided to them by the Federal government following the events of September 11, 2001. FinCEN believes that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, FinCEN believes the provision in 31 CFR 103.121 that requires a bank to provide adequate notice to its customers that it is requesting information to verify their identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements of 31 CFR 103.121 similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. FinCEN believes that the compliance burden, if any, is minimized for banks, including small banks, because banks have the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, FinCEN believes that the flexibility incorporated into the customer identification rules of 31 CFR 103.121 will permit each bank to tailor its customer identification program to fit its own size and needs. In this regard, FinCEN believes that expenditures associated with establishing and implementing a customer identification program will be commensurate with the size of a bank. If a bank is small, the burden to comply with the customer identification requirements should be *de minimis*.

III. Executive Order 12866

Treasury has determined that this proposal is not a ''significant regulatory action'' under Executive Order 12866.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

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 continues 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, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by revising paragraph (a)(2)(ii) of § 103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) * * *

(2) * * *

(ii) A bank, as set forth in § 103.11(c), that does not have a Federal functional regulator.

* * * * *

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–11015 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P

Federal Register

Friday,
May 9, 2003

Part III

Office of Management and Budget

Draft Report of the Small Business Paperwork Relief Task Force; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report of the Small Business Paperwork Relief Task Force

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Small Business Paperwork Relief Task Force requests comments on the attached Draft Report. In this Draft Report, the Small Business Paperwork Relief Task Force discusses and makes recommendations concerning consolidated information collections, an organized list of information collections, and interactive electronic systems.

DATES: To ensure consideration of comments, comments must be in writing and received by OMB no later than June 4, 2003.

ADDRESSES: Comments on this Draft Report should be addressed to Stanton D. Anderson, Office of E-Government and Information Technology.

You are encouraged to submit these comments by facsimile to (202) 395–0342, or by electronic mail to *smallbiz@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Stanton D. Anderson, Office of Information Technology and E-Government, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–0346.

SUPPLEMENTARY INFORMATION: Congress directed the Director of OMB to convene and have a representative chair a Task Force to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information'' (44 U.S.C. 3520, Pub. L. 107–198). More specifically, this Small Business Paperwork Relief Task Force is charged with examining five ways to reduce the information collection burden placed by government on small business concerns. They are:

1. Examine the feasibility and desirability of requiring the consolidation of information collection requirements within and across Federal agencies and programs, and identify ways of doing so.

2. Examine the feasibility and benefits to small businesses of having OMB publish a list of data collections organized in a manner by which they can more easily identify requirements with which they are expected to comply.

3. Examine the savings and develop recommendations for implementing electronic submissions of information to the Federal government with immediate feedback to the submitter.

4. Make recommendations to improve the electronic dissemination of information collected under Federal requirements.

5. Recommend a plan to develop an interactive Government-wide Internet program to identify applicable collections and facilitate compliance.

While carrying out its work, the Small Business Paperwork Relief Task Force is asked to consider opportunities for the coordination of Federal and State reporting requirements, and coordination among individuals who have been designated as the small business ''point of contact'' in their agencies.

The Small Business Paperwork Relief Task Force is required to submit a report of its findings on the first three issues no later than one year after enactment, or June 28, 2003. A second report on the final two issues is required no later than two years after enactment, or June 28, 2004. Both reports must be submitted to the Director of OMB; the Small Business and Agriculture Regulatory Enforcement Ombudsman; and the Senate Committees on Governmental Affairs and Small Business and Entrepreneurship; and, the House Committees on Government Reform and Small Business.

The Director of OMB appointed Dr. John D. Graham, Administrator of the Office of Information and Regulatory Affairs, and Mr. Mark A. Forman, Administrator for E-Government and Information Technology, to co-chair the Small Business Paperwork Relief Task Force.

The Act specifies the following agencies to be represented on the SBPRA Task Force: Department of Labor (including the Bureau of Labor Statistics, and the Occupational Safety and Health Administration); Environmental Protection Agency; Department of Transportation; Office of Advocacy of the Small Business Administration; Internal Revenue Service; Department of Health and Human Services (including the Centers for Medicare and Medicaid Services); Department of Agriculture; Department of Interior; the General Services Administration; and two other participants to be selected by the Director of OMB (who are the Department of Commerce and additional representatives from the Small Business Administration).

The Small Business Paperwork Relief Task Force is now seeking input from all interested parties concerning the findings and recommendations contained in this draft report. All comments will be considered and may result in modifications to the final report. A summary of the public comments with responses of the Task Force will be attached to the final report.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

Mark Forman,

Administrator for E-Government and Information Technology.

Draft Report of the Small Business Paperwork Relief Task Force

Introduction: The Problem of Paperwork Burden for Small Businesses

This is the first report of the Task Force created under the Small Business Paperwork Relief Act of 2002 (SBPRA).[1] It contains findings and recommendations intended to reduce the burden imposed on small businesses by Government paperwork information collection requirements.

What Is a ''Small Business'' and Why Does the Law Focus on the Small Business Community?

For the purposes of SBPRA, ''the term 'small business concern' has the meaning given under section 3 of the Small Business Act (15 U.S.C. 632).'' This definition includes any firm that is ''independently owned and operated'' and is ''not dominant in its field of operation''. The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in the Code of Federal Regulations, 13 CFR 121.201.[2] If an industry is not specified in the regulation, the default is (a) 500 or fewer employees, or (b) $6 million or less in receipts.

While SBPRA applies to all small businesses, the Act further specifies that agencies make efforts to ''reduce the information collection burden for small business concerns with fewer than 25 employees.''

Small businesses have always been the backbone of our economy. They represent 99.7% of all employers. Of the Nation's 22.4 million businesses, only 17,000 are large (with more than 500 employees). That leaves a total of about

[1] 44 U.S.C. 3520, Public Law 107–198, references at Appendix 1.

[2] For more information, visit *http://www.sba.gov/size/.*

22.4 million small businesses.[3] Within this community, 90% have fewer than 20 employees.[4] Given the enormous collective impact that the smallest businesses have on our Nation's overall economy, it is vital that government do all it can to create the climate they need to thrive.

What Is the Government's Paperwork Burden and How Heavily Does It Impact Small Businesses?

The term ''paperwork'' refers to the traditional method for collecting information, paper forms. However, SBPRA applies to any information collection, including those via the Internet, telephone, or other medium. SBPRA uses the broad definition for ''collection of information'' in section 3502 of the Paperwork Reduction Act of 1995 (PRA). It means ''obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

• Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or,

• Answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes.''

Burden is also defined in the PRA. It goes beyond the effort required to complete a form and includes ''time, effort or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

1. Reviewing instructions;

2. Acquiring, installing, and utilizing technology and systems;

3. Adjusting the existing ways to comply with any previously applicable instructions and requirements;

4. Searching data sources;

5. Completing and reviewing the collection of information; and

6. Transmitting or otherwise disclosing the information.''

Government agencies must collect information from the public to administer important programs and fulfill their intended missions.

Purpose of government collection	Examples
To obtain or retain a benefit for the business	License and permit applications.
To demonstrate compliance with regulations	Water discharge monitoring reports.
Recordkeeping requirements	Inspection records.
For statistical purposes or rule development	Industry surveys.
For use by third parties	Nutrition labels.

The Office of Management and Budget (OMB) is responsible for reviewing and approving information collections. The Federal government alone now has over 8,000 separate information collection requests authorized by OMB. These OMB approved information collections fall into three categories.

• 38.4% are mandatory where failure to provide the information required can result in civil, even criminal, sanctions;

• 39.7% are required to obtain or retain some kind of benefit for the respondent; and,

•* 21.9% are voluntary where a response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.[5]

This report focuses on the first two categories, which generally evolve from regulations. It is important to note that agencies generally collect, or require those regulated to keep records, as part of their regulatory provisions. The information-related provisions are designed to help the agency ensure compliance with the rule. For example, EPA requires certain businesses to monitor and keep records of pollutants to ensure that certain emission thresholds are not exceeded. The substance (and primary cost) of such a rule is the action the businesses must take to reduce their pollution emissions. The recordkeeping is a secondary requirement, although it may be a significant one. Consequently, when considering reductions of paperwork burden on small businesses, we must also take into account the regulatory provisions that the reporting or recordkeeping are meant to support. It would be misleading to focus attention only on information collection burdens without making clear this connection with the related substantive regulatory provisions.

OMB estimates the cost to provide data required by all approved information collection requests in Fiscal Year 2002 was 8 billion hours and $140 billion.[6] OMB's estimates reflect data provided by the collecting agencies, and may understate the actual burden imposed on the public. Further, information collections are only part of the full impact of the Federal regulatory process. According to a 2001 report, ''The Impact of Regulatory Costs on Small Firms'' by W. Mark Crain and Thomas D. Hopkins, the total costs of federal regulations were estimated to be $843 billion in 2000, or 8 percent of the U.S. Gross Domestic Product.[7] Of these costs, $497 billion fell on business and $346 billion fell on consumers or other governments.[8]

Government places a heavy and expensive reporting and recordkeeping burden on all businesses, which is most keenly felt in the smallest firms. Additionally, small businesses bear a disproportionate share of the total regulatory burden.[9] For firms employing fewer than 20 employees, the annual regulatory burden is $6,975 per employee—nearly 60 percent more than that for firms with more than 500 employees, at $4,463.[10] Table 1 provides a comparison by sector.

[3] SBA Office of Advocacy Web site, Small Business by the Numbers, at *http://www.sba.gov/advo*.

[4] W. Mark Crain & Thomas D. Hopkins, ''The Impact of Regulatory Costs on Small Firms'', Report to the Small Business Administration, RFP No. SBAHQ–00–R–0027 (2001), at 2. The opinions and recommendations of the authors of this study do not necessarily reflect official policies of the SBA or other agencies of the U.S. government. For more information, write to the Office of Advocacy at 409 Third Street SW., Washington, DC 20416, or visit the office's Internet site at *http://www.sba.gov/advo*.

[5] The Office of Information and Regulatory Affairs Reports Management System, February 2003.

[6] *Id.* Dollar cost figures do not include the cost represented by the hour burden reported.

[7] Crain & Hopkins, at 1.

[8] Crain & Hopkins, at 25.

[9] Crain & Hopkins, at 2.

[10] Crain & Hopkins, at 3.

TABLE.—THE INCIDENCE OF FEDERAL REGULATIONS BY FIRM SIZE, ALL BUSINESS SECTORS *

Type of regulation	All firms	Cost per employee for firms with:		
		<20 employees	20–499 employees	500 + employees
All Federal Regulations	$4,722	$6,975	$4,319	$4,463
Environmental	1,213	3,328	1,173	717
Economic	2,065	1,616	1,648	2,485
Workplace	779	829	873	698
Tax Compliance	665	1,202	625	562

* **Note to Table 1:** These aggregate cost data use employment shares to weight the respective busihess sectors. The estimates are for 2000 and are denominated in 2000 dollars.
Source: The Impact of Regulatory Costs on Small Firms, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins.

In a December, 2001, small business poll conducted by the National Federation of Independent Business (NFIB), respondents shared their perspectives on the impacts of the regulatory workload on their firms. When asked ''is government regulation a very serious, somewhat serious, not too serious, or not at all serious problem for your business,'' nearly half, or 43.6 percent, answered ''very serious'' or ''somewhat serious.''[11] When asked ''which level of government creates the most serious regulatory problems for you,'' 49 percent chose the Federal government, 35 percent State government and 13 percent local government.[12]

When asked ''What is the single greatest problem created for your business by government regulation,'' the largest percentage of small businesses in three size groups singled out extra paperwork, with the number of votes increasing as the number of employees decreased.[13] The second most frequently selected problems, sharing an equal number of votes, were: (1) difficulty understanding what (a business must do) to comply, and (2) dollars spent to comply.[14] This poll supports the conclusion that SBPRA focuses on issues of importance to small business concerns.

Several factors contribute to the difficulty small businesses experience when trying to find out what they must do to comply with regulations and related information collections:

Volume—It is well known that the Code of Federal Regulations (CFR) continues to expand despite efforts to curtail further growth. The CFR grew from 71,000 pages in 1975 to 135,000 pages in 1998. Annually, there are more than 4,000 regulatory changes introduced by the Federal government alone. Businesses must find ways to navigate the maze of requirements to identify the rules and information collections that apply to them.

Multi-Jurisdictional System—Businesses are regulated by numerous agencies at Federal, State and local levels, all imposing separate requirements on individual businesses—adding to the confusion and time needed to become compliant. For example, for the trucking industry, there are over 40 information collection requirements from 11 federal entities and at least 5 standardized transactions imposed by every state.

Complexity—Many of the laws and regulations are extremely complex and difficult to understand, causing businesses to spend additional money hiring service providers such as attorneys, accountants, and permit agents. Paying taxes, acquiring licenses and permits, and managing employees are reportedly the three most burdensome areas of laws and regulations affecting businesses, particularly for the most regulated industries (*e.g.,* transportation, food, chemicals, auto, and health care).

Inaccessibility—Currently, businesses must search through multiple sources of information, such as the **Federal Register,** Federal/State/local agency and trade Web sites, and trade publications to try to locate all the rules and regulations that affect them. They may also learn of requirements through the media, at professional conferences and from other business persons. Not all sources are accessible 24/7, and many remain informational only, without the kind of compliance assistance many small businesses need.

Two Perspectives on the Regulatory Information

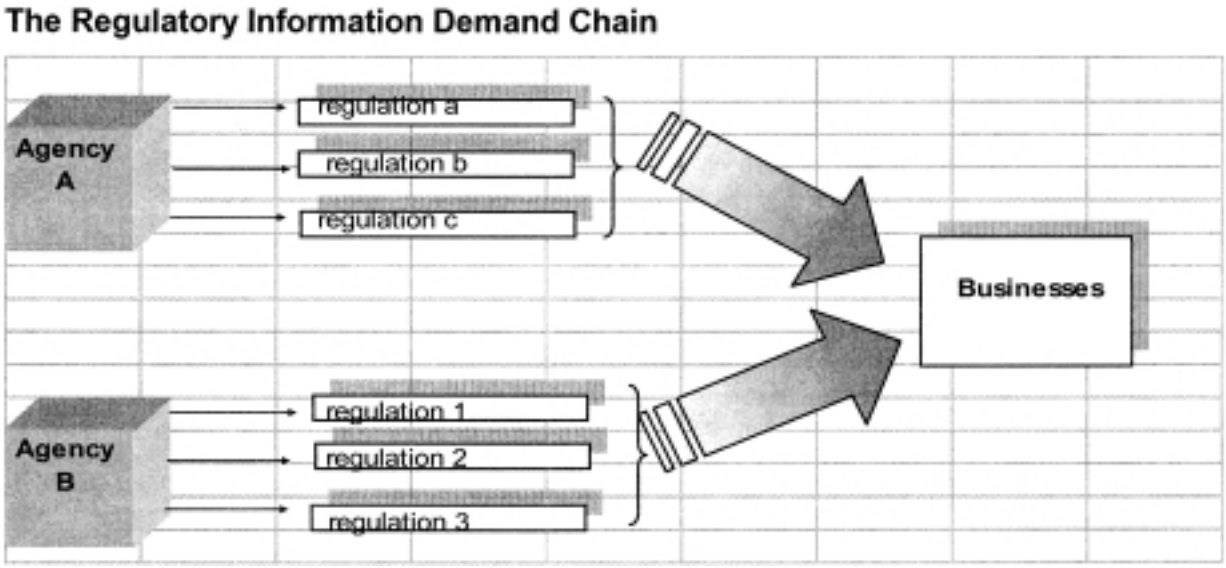
Regulatory agencies and small businesses have different perspectives on information collections associated with regulations. Understandably the regulator views the information burden from the perspective of its role in meeting the goals of each specific regulation, *e.g.,* cleaner air, safer automobiles or workplaces, sounder financial practices. This burden is seen as part of the costs of regulatory compliance and is borne by small business and others who must comply. The analytical framework for reviewing the burden revolves around the regulation—can it be harmonized with other agency regulations, or do the societal benefits justify the societal costs, including the costs of paperwork and compliance efforts? The following chart depicts the regulator-centered point of views. In this case, reduction in burden focuses on individual regulations a, b, c, 1, 2, and 3.

[11] Coping with Regulation, NFIB National Small Business Poll, Volume 1, Issue 5 (2001), ISSN–1534–8326, at 9. The poll is available for viewing at *http://www.nfib.com.*

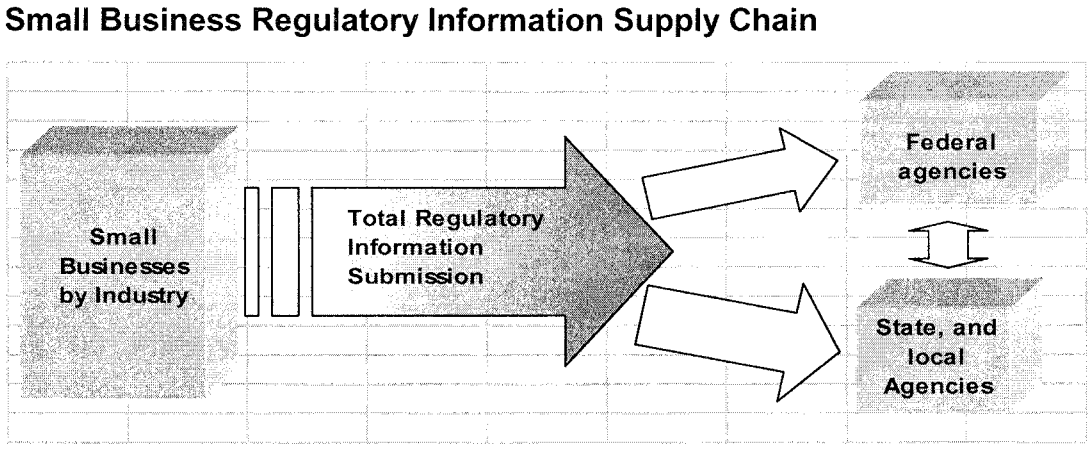
[12] *Id.*

[13] *Id.*

[14] *Id.* It is not clear whether the difficulty in understanding how to comply referred to compliance reporting, compliance with the substantive regulatory standards, or both.



An alternative way of analyzing the regulatory burden is from the perspective of the information supplier, *i.e.,* the regulated businesses. A customer-driven government would analyze the regulatory burden from the point of view of specific businesses or, more practically, from the point of view of clusters of ''regulated'' communities, and find ways to streamline and harmonize regulatory information collected from these clusters. The graphic below shows the environment from the information provider point of view. In this case, burden reduction focuses on clusters of regulatory requirements from all Federal, State, and local governments that affect a particular regulatory community.



Background: Efforts To Address the Problem

What Prior Efforts Have Been Made To Address the Information Collection Burden?

Federal Reports Act of 1942

The Federal Reports Act of 1942 [15–18] gave OMB's predecessor agency, the Bureau of the Budget, the authority to approve federal information collections. OMB's Division of Statistical Standards was given responsibility for approving Federal forms. After World War II, the Division concentrated mostly on increasing the use of statistical sampling and other techniques to reduce the costs of Federal information collections.

Paperwork Reduction Act of 1980

Congress first passed the Paperwork Reduction Act (PRA) in 1980.[19] The PRA eliminated the exemptions granted under the FRA to the Internal Revenue Service, bank regulatory agencies, and independent regulatory commissions. It also made clear that OMB would approve all Federal information collections, including recordkeeping and reporting requirements contained in regulations.

The PRA also added a ''bottom up'' component to paperwork review; each agency is required to perform an internal review of each information collection request before submitting it to OMB for approval. The PRA also requires public notice and the opportunity for public comment on proposed information collections.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980 [20] recognized that small entities may be less able to manage the burdens imposed by Federal regulation, or even unable to achieve compliance, than

[19] Pub. L. 96–511.

[20] Pub. L. 96–354.

large entities. The RFA requires agencies to specifically examine the effects on small businesses of rules under consideration, to involve small businesses in the rulemaking process, and to consider alternatives that will reduce the costs imposed or increase the benefits to small businesses.

Paperwork Reduction Act of 1995

In 1995, Congress amended the PRA to emphasize, clarify, and reaffirm several purposes of the original PRA, specifically that—

- The PRA applies to all Federal government-sponsored collections of information, including those that do not require submission of information directly to a Federal agency (*e.g.*, third-party reporting requirement, Federal-sponsored academic research);
- That the fundamental purpose of the PRA is to minimize the burden imposed by Federal paperwork on the public; and
- That each Federal agency is responsible for minimizing its paperwork burden and fostering paperwork reduction.

In addition, the 1995 PRA set a government-wide goal of a 5% annual reduction in paperwork burden and assigned responsibility for agency review of information collections to the agency Chief Information Officer.

Small Business Regulatory Enforcement Fairness Act of 1996

In 1996, Congress amended the RFA and strengthened its protection for small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 [21] (SBREFA) subjected agency RFA determinations to judicial review, subjected agency actions with large impacts on the economy as a whole or a specific sector of the economy to congressional review, and required agencies to provide additional compliance assistance to small entities. In addition, SBREFA required the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) to convene a panel of agency employees, SBA's Office of Advocacy, and OMB to solicit advice from small businesses before the agency issues a proposed rule that may have a significant economic impact on a substantial number of small entities.

The Government Paperwork Elimination Act of 1998

The Government Paperwork Elimination Act of 1998 [22] requires Federal agencies, by October 21, 2003, to allow individuals or entities that deal with the agencies the option to submit information or transact with the agency electronically, when practicable, and to maintain records electronically, when practicable.

How Does the Small Business Paperwork Relief Act Add to These Prior Efforts?

SBPRA was enacted in June of 2002 in a further effort to help reduce the burden of paperwork on small businesses. It requires the Federal government to (1) publish an annual list of the compliance assistance resources available to small businesses, (2) establish a single point of contact within agencies to interact with small businesses, and (3) establish an interagency Task Force to study and recommend additional means of reducing the burden. This report addresses activities of the Small Business Paperwork Relief Task Force.

The Small Business Paperwork Relief Task Force

What Specific Functions Are Assigned to the Task Force?

SBPRA requires the Director of OMB to convene and chair a Task Force ''to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information.'' More specifically, the Small Business Paperwork Relief Task Force is charged with examining five ways to reduce the information collection burden placed by government on small business concerns. They are:

1. Examine the feasibility and desirability of requiring the consolidation of information collection requirements within and across Federal agencies and programs, and identify ways of doing so.
2. Examine the feasibility and benefits to small businesses of having OMB publish a list of data collections organized in a manner by which they can more easily identify requirements with which they are expected to comply.
3. Examine the savings and develop recommendations for implementing electronic submissions of information to the Federal government with immediate feedback to the submitter.
4. Make recommendations to improve the electronic dissemination of information collected under Federal requirements.
5. Recommend a plan to develop an interactive Government-wide Internet program to identify applicable collections and facilitate compliance.

While carrying out its work, the Small Business Paperwork Relief Task Force is asked to consider opportunities for the coordination of Federal and State reporting requirements, and coordination among individuals who have been designated as the small business ''point of contact'' in their agencies.

The Task Force is required to submit a report of its findings on the first three questions no later than one year after enactment, or June 28, 2003. A second report on the final two questions is required no later than two years after enactment, or June 28, 2004. Both reports must be submitted to—

- The Director of OMB;
- The Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)); and,
- The chairpersons and ranking minority members of:

—The Senate Committees on Governmental Affairs and Small Business and Entrepreneurship; and,

—The House Committees on Government Reform and Small Business.

Which Agencies Are Represented and Who Are the Small Business Paperwork Relief Task Force Members?

Mitchell D. Daniels, the Director of OMB, appointed Dr. John D. Graham, Administrator of the Office of Information and Regulatory Affairs, and Mark A. Forman, Associate Director for Information Technology and E-Government, to co-chair the Small Business Paperwork Relief Task Force. Dr. Graham is responsible for administering the Paperwork Reduction Act and for overseeing the Federal regulatory process. Mr. Forman is responsible for overseeing the government-wide, cross-agency E-Government initiative, including a Government-to-Business Portfolio of projects. Thus, both organizations are equally vested in the Task Force agenda.

The Act specifies the following agencies to be represented on the Task Force:

- Department of Labor (including the Bureau of Labor Statistics, and the Occupational Safety and Health Administration);
- Environmental Protection Agency;
- Department of Transportation;
- Office of Advocacy of the Small Business Administration;
- Internal Revenue Service;
- Department of Health and Human Services (including the Centers for Medicare and Medicaid Services);

[21] Pub. L. 104–121.

[22] Pub. L. 105–277, Title XVII, 112 Stat. 2681–749.

- Department of Agriculture;
- Department of Interior;
- General Services Administration;
- Two other participants to be selected by the Director of OMB (the Department of Commerce and additional representation from the Small Business Administration were chosen).

The Small Business Paperwork Relief Task Force members are listed by name at Appendix 2. A list of other participating staff is included at Appendix 3.

What Are the Goals, Objectives, and Operating Principles?

Goal: Identify effective, realistic ways to reduce the burden on small businesses by making it easier to find, understand, and comply with government information collection requirements.

Objective 1: Recommend actions that can make it easier for small businesses to find out what information collections apply to them from individual Federal agencies, across all Federal agencies, and from State and Local governments, where practicable.

Objective 2: Recommend actions that can reduce the difficulty, frequency, redundancy and expense of compliance for small businesses.

Objective 3: Recommend actions that will help small businesses understand why information is being collected and how it benefits them.

Operating Principles

- Recommendations should be consistent with principles of the President's Management Agenda:
- Citizen-centered, not bureaucracy-centered.
- Benefits to small businesses must take precedence over benefits to government.
- Results-oriented. Success should be measured by benefits that are demonstrable.
- Market-based, actively promoting innovation.
- Recommendations must be technically feasible.
- Recommendations should be supportable within existing government agencies and management structures.
- Recommendations must be achievable given existing Agency resources, or sufficient case must be made to support additional costs.
- Recommendations should address both short term and long term remedies.
- Recommendations should leverage and build on efforts underway that address the Task Force's goals.
- Recommendations should be consistent with lessons learned and based on best practices from past efforts.

In developing its recommendations, the Small Business Paperwork Relief Task Force made the assumption that Federal agencies are in compliance with existing legislative requirements that address paperwork burden, including: the Paperwork Reduction Act of 1980 and 1995, the Regulatory Flexibility Act of 1995, and the Small Business Regulatory Flexibility Act of 1996. The Task Force recommendations are intended to build upon, rather than duplicate, the efforts required by these statutes. In addition, the Task Force assumed that Federal agencies collect the minimum information necessary to fulfill statutory or programmatic responsibilities, consistent with the Paperwork Reduction Act. The recommendations concentrate on ways to minimize the burden associated with existing requirements, rather than eliminate requirements.

What Methods Did the Task Force Use To Derive Its Recommendations?

The Small Business Paperwork Relief Task Force began its work with a meeting of the full membership to develop a common understanding of the law, project goals, scope, roles and responsibilities, resource requirements, strategy, timeline and deliverables. A professionally facilitated brainstorming session followed, during which members began looking at the three major tasks for the 2003 report.

After the initial meeting the Task Force divided into three subcommittees to examine the three questions in greater detail. Additional staff experts from the agencies joined the effort. The subcommittees used methods such as:

- Assigning specific questions to experts for research;
- In-person and virtual brainstorming with a wider group of experts;
- Inventorying and investigating activities and projects already underway;
- Studying best practices and lessons learned from prior/current activities; and
- Studying the results of public outreach conducted by the Small Business Administration's (SBA) Office of Advocacy and other reference material intended to provide input from the business community and other stakeholders.

The subcommittee members and staff experts worked together to develop findings and recommendations. The initial drafts were reviewed, modified, and finally adopted by the subcommittees, then presented to the full Task Force for consideration. Again the material was reviewed, modified and adopted for publication in the **Federal Register**.

At the request of the Small Business Paperwork Relief Task Force, SBA's Office of Advocacy held a public meeting on March 4, 2003, to solicit the views of interested persons regarding SBPRA. The Chief Counsel for Advocacy convened the meeting both in his Advocacy role, and as a Task Force member. Following the meeting, written input was accepted, including the results of two surveys conducted about SBPRA by the U.S. Chamber of Commerce and the National Federation of Independent Business. The Office of Advocacy published the written proceedings of its outreach activities which is included at Appendix 4.

The Small Business Paperwork Relief Task Force is now seeking input from all interested parties concerning the findings and recommendations contained in this draft report. All comments will be considered and may result in modifications to the final report. A summary of the public comments with responses of the Task Force will be attached to the final report.

Findings and Recommendations

Task #1: Consolidated Information Collections (See, 44 U.S.C. 3520(c)(1))

Problem Statement

As noted earlier in this report, reporting and recordkeeping requirements place a heavy and expensive burden on businesses, particularly small businesses. Compliance with these requirements is made more difficult by the number and complexity of regulations which impose direct burdens of compliance. Businesses are often subject to regulations enforced by multiple Federal agencies. The need to report information to several different government entities also increases compliance costs, particularly when reporting or recordkeeping requirements are not coordinated across Agencies. Subcommittee 1 has considered ways to reduce the paperwork burden on small businesses by identifying and consolidating similar collections of information across Federal agencies. This section reports our findings and recommendations for accomplishing these goals.

Assumptions

In developing our recommendations, the subcommittee made the following assumptions:

- There are several barriers to burden reduction that must be recognized.

—*Information Needs.* Federal agencies have specific statutory and programmatic responsibilities, and require information in order to fulfill those responsibilities. Paperwork can only be reduced in ways that will not negatively impact the effectiveness of the laws and regulations to which the Agency is accountable.

—*Expanded Responsibilities.* The need for information increases as new federal programs are created, existing programs are expanded and additional health, safety or environmental protection laws are enacted.

Issues

The Task Force was asked to specifically consider the feasibility of: (1) Synchronized reporting times and frequencies, (2) consolidated reporting requirements within and across agencies, and (3) small business compliance assistance, and submission of information, through a single point of contact within an agency. Subcommittee 1 conducted a brief review, which uncovered a number of federal government initiatives to reduce or streamline reporting requirements for businesses. Several of these initiatives are described in Appendix 5. Our review indicates that while each of these options outlined in the law may be desirable and feasible under the appropriate circumstances, there are several barriers that need to be addressed.

Synchronized Reporting

Synchronized reporting seems to have the least potential for burden reduction. Not all information that businesses are required to report is submitted to the Federal government on a regular basis. Some reporting occurs only at the time of an event, such as admission of a patient to a nursing home, or a chemical spill. Timely submission of this information is critical to fulfill agency responsibilities.

Even for information that is submitted to the government on a regular basis—monthly, quarterly or annually—a synchronized reporting time may not be desirable. In the public meeting held by SBA on March 4, 2003, small businesses expressed concern about synchronized reporting times. A requirement to provide all information required by the federal government on a single date has the potential of creating a greater workload burden for business than when the reporting is spaced throughout the year. Clearly, some small businesses prefer spreading reporting throughout the year.

Further, for many reporting requirements, the reporting frequency is mandated in statute or regulation. Synchronizing reporting frequency would require legislative or regulatory action. To the extent that similar information is required within or across Agencies, such action should be taken, provided changing the reporting frequency would not negatively impact the effectiveness of the underlying law or regulation.

Consolidated Information Collections

The Task Force believes that there is opportunity for improved consolidation of similar information collections and reporting requirements across the Federal Government. We have outlined several recommendations for accomplishing this task. However, we recognize that, given the diversity of federal government activities, no one method or template for reporting would fit all information collections. Seemingly duplicative information collections may not be appropriate for consolidation due to the nature or utility of the data collected. For example, definitions across similar data collections may not be harmonized due to differences across industries or underlying statutes. Consolidation of such reporting requirements may lead to confusion, rather than simplification. There are also barriers to consolidation in many cases, stemming from confidentiality of data and privacy rights. For example, statistical agencies collecting data under a confidentiality pledge cannot share information with enforcement agencies such as OSHA and the IRS.

Single Small-Business Point of Contact

Establishing a single point of contact for small businesses appears to be both feasible and desirable. The Small Business Paperwork Relief Act requires all Federal Agencies to establish a single point of contact for small businesses. Small business participants in the SBA public meeting were very supportive of this measure. The Point of Contact should be able to provide information about regulatory reporting requirements enforced by the Agency, and technical assistance in fulfilling those requirements.

It should be noted that the strategies discussed above are not mutually exclusive. For example, if several forms are consolidated into a single format, then synchronized reporting for information submissions having the same frequency with respect to timing would logically follow. Greatest efficiencies from consolidated reporting are to be found where the same information is being collected more than once. Agencies should focus resources to identify and merge these collections when feasible. Small businesses should also participate in this process, by utilizing existing and planned communication mechanisms to inform Agencies and OMB of duplicative collections.

Recommendations

The subcommittee has developed several recommendations to achieve the SBPRA goals. The recommendations discussed below are consistent with the Operating Principles outlined above. They have been limited to options considered technically feasible, supportable within existing government management structures, and doable given existing Agency resources. We also considered the previous legislative efforts to address paperwork burden, discussed above, when developing the recommendations. While the recommendations listed below do not duplicate these prior efforts, neither do they alleviate the need to continue them. We've determined that more can and should be done within the existing framework created by these Acts to reduce paperwork burden on small businesses. For example, the Paperwork Reduction Act requires agencies to ensure that data collections minimize burden and maximize practical utility. Greater emphasis should be placed on these criteria for collections from small businesses. The following are some examples of opportunities for improvement.

Practical Utility

- Agencies should periodically review laws and regulations to assure the continued usefulness of reporting and recordkeeping requirements.
- Eliminate those requirements found to no longer have practical utility. For example, OSHA does not require certain small businesses in service producing industries with a low frequency of injury and illness to keep worker injury and illness logs.

Minimize Burden

- Review reporting forms and instructions for simplicity and ease of understanding.
- Conduct periodic reviews of existing collections to explore less burdensome ways to obtain data.
- Harmonize definitions across similar data elements and use existing classification systems when feasible.

Based on our analysis of the problem and issues discussed above, we present the following recommendations to reduce paperwork burden on small businesses through simplification and consolidation of reporting requirements.

These recommendations should not be viewed as discrete actions; the recommended steps flow toward a final goal.

1. *Agencies Should Develop a SBPRA Plan.* The plan would outline specific steps the Agency would take to reduce paperwork burden on small businesses, set goals and establish timelines for achieving those goals. The Task Force envisions that the initial plan would include steps to develop a complete inventory of Agency recordkeeping and reporting requirements, followed by a detailed mapping of those requirements to the Agency's business lines/programs or underlying regulations. Based on this analysis, Agencies would identify and prioritize opportunities for burden reduction. Additionally, as part of their SBPRA plans, agencies should identify a person or group of persons to serve as the single point of contact for the agency's paperwork requirements. The Task Force envisions that over time the single point of contact would become familiar with the paperwork requirements imposed by the agency, be able to identify duplicative or obsolete requirements, and provide some level of compliance assistance to the public.

2. *Require Agencies To Submit Annual SBPRA Reports To OMB.* Agencies would be required to provide their SBPRA plans, or updated plans, status of implementation, and whether goals have been met. This information would be included in the annual OMB Information Collection Budget.

3. *Improve Outreach To Small Businesses.* Design a simple process for small businesses to comment on pending or active information collections. Although mechanisms exist for the public to comment on new and existing information collections, many small businesses have criticized the existing comment process as overly complex and burdensome. A system should be designed to give the public the ability to see, via the Internet, any active or pending information.

Agencies should also take steps to improve outreach to small businesses, including the conduct of public meetings and announcements of public comment periods in industry publications, on all highly burdensome (defined as over 1,000,000 burden hours) information collections expected to affect small businesses. Additional outreach efforts would significantly improve an Agency's efforts to identify opportunities for burden reduction.

4. *Create Partnerships between Agencies with similar or overlapping regulatory authority.* Identify other agencies, including state and local government agencies, with similar reporting requirements and partner with them to develop consolidated reporting systems. Duplication should be eliminated and data sharing maximized when feasible.

5. *Develop OMB Guidelines to Achieve Burden Reduction through E-Government.* We recommend that the Office of Management and Budget require each agency to incorporate burden reduction as a goal of its E-Government initiative, and issue guidelines to aid Agencies in doing so. All Executive Branch Departments have existing E-Gov working groups which could take the lead in this effort. We envision E-Government as more than allowing electronic submission of existing forms. The E-Gov initiative should be a tool to achieve further burden reduction through process re-engineering when feasible. In this way the E-Gov working groups would compliment, rather than duplicate, other burden reduction efforts within the Agency.

6. *Continue the Business Compliance One Stop initiative.* The Business Compliance One Stop (BCOS) is one of the Administration's 25 E-Government initiatives, located at *http://www.BusinessLaw.gov.* It is designed to ultimately provide small businesses a single point of entry for regulatory compliance information. The Task Force believes BCOS shows promise as a means for achieving the purpose of SBPRA. Since its inception in the Spring of 2002, the BCOS has streamlined a number of paperwork reporting requirements and transactions from a business-centric perspective. However, it is a long-term solution since the project is expected to take years to complete. More information on BCOS is provided in Appendix 6.

Task #2: Organized List of Information Collections (See, 44 U.S.C. 3520(c)(2))

Problem Statement

Small businesses can be unaware of all of the federal regulatory requirements that apply to them and the reports that they must file and records that they must keep in order to demonstrate compliance. Small businesses may not know where to find such information or how to comply or where to go for compliance assistance. As a result, the agency's intent for federal information collection requirements may not be achieved as small businesses are not aware of the information they are required to provide. Ideally, small businesses would have access to a system that enables them to quickly and easily generate a list of all requirements that apply to their operation. Providing this information to small businesses would reduce the burden associated with reporting and recordkeeping requirements.

Assumptions

To be most useful, a tool for meeting small businesses' need for information about reporting and recordkeeping requirements would provide a list that is:

- Tailored to specific industry sectors, (*e.g.*, dry cleaning, printing),
- Comprehensive,
- User-friendly, and
- Up-to-date.

Issues

Creating a tool for identifying applicable requirements for small businesses will require resolving a number of technical, management, and resource issues.

Technical Issues

- *Overcoming the lack of a complete inventory of federal information collections.* One prerequisite for developing a list of applicable reporting and recordkeeping requirements is a complete inventory of all federal information collections. OMB maintains a database called the Reports Management System that stores only generally descriptive information about the clearance packages it reviews. There are three issues that limit its usefulness for small business:

1. *The Reports Management System does not include the reporting and recordkeeping requirements that small businesses are looking for.* The database was built as an internally management tool for use by OMB to document the information collection review process under the Paperwork Reduction Act. It contains information provided by agencies on form OMB 83–I (*see http://www.whitehouse.gov/omb/inforeg/infocoll.html*). Because the system is a management tool for OMB, it is not accessible by other agencies, the public, or small businesses. The system only contains a brief overall title of the information collections or groups of information collections for which OMB grants approval. The system does not contain that actual requirements imposed on small businesses. Small businesses would have to go to the agency or the Code of Federal Regulation (CFR) to learn the details of what is required.

2. *Data quality and accuracy are inconsistent.* Accuracy of the data submitted by agencies on OMB form 83–I varies.

3. *Information collections in the database cannot be sorted by size or sector.* There is no consistent element related to size that would indicate applicability to a small business. Nor are there elements, such as NAICS codes, that would indicate applicability to specific small business sectors. At one time many years ago the Standard Industrial Classifications codes (SIC, a precursor to NAICS) that applied to a clearance package were collected. This information was discontinued because 70 percent or more of the clearance packages were submitted as applying to ''10 or more SIC codes'' rather than listing a few specific codes. While the form and database do include key words that can help identify applicability, there are no standards to guide their selection.

• *Overcoming the lack of a consistent methodology for identifying a requirement's applicability.* A second prerequisite for developing a list of reporting and recordkeeping requirements is the ability to identify which requirements apply to which businesses. However, there is no federal guidance that addresses how agencies should specify reporting and recordkeeping requirements applicable to a particular business size or sector. Each agency, and in some cases each program within an agency, makes its own decision about whether to include this information. For example, at EPA, some programs identify the NAICS codes in their regulatory development and tracking systems, while others use an industry sector descriptor or nothing at all.

• Members of the Business Compliance One Stop (BCOS) project team have been developing plans for a system capable of identifying regulatory reporting and recordkeeping requirements applicable to specific business sizes and sectors. They have discovered the following issues which need to be addressed:

1. *Multiple NAICS Codes Apply to Individual Businesses:* Many businesses' activities are characterized by multiple NAICS codes. A list of reporting and recordkeeping requirements listed by NAICS codes alone would require many businesses to review multiple requirements listed under several NAICS codes. Such listings would likely include duplicative requirements.

2. *Broadly Applicable Regulations:* OMB has estimated that approximately 70 percent of information collections apply to many, or even all, NAICS codes. For example, all businesses are subject to IRS tax reporting.

3. *Regulation Applicability Based on Other Factors:* In some cases, regulatory applicability is dependent on factors other than business size or sector. For example, IRS bases its requirements on the points in a business life-cycle and other unique criteria.

A complete listing of all reporting and recordkeeping requirements for small businesses can not be based on NAICS codes alone. It will need to take into account not only business type, but also size and other factors that can affect applicability.

• *Resolving complexities affecting ease of use.* Because of the issues described above, having a government-generated list of reporting and recordkeeping requirements by NAICS code alone would not meet small business information needs. Such a list would include every requirement that potentially could apply to a particular NAICS code. The list of potentially applicable requirements for a particular NAICS code would not be significantly shorter than the list of all existing information collection requirements. Moreover, if a small business were listed under more than one NAICS code, the research to determine applicability would be even greater.

• One alternative would be to sort the requirements into multiple categories that could include an industry sector identification and other distinguishing criteria, such as the kinds of businesses subject to environmental or worker safety reporting and recordkeeping requirements. A list organized in this manner would require the user to search under multiple categories and to cross-reference the requirements that appear under each one. It would be time consuming, but would lead to a more accurate result than a listing by NAICS code alone. Even with this more tailored approach, the result would be affected by how knowledgeable the user is about his or her operation. The user would have to know which headings to search. This process would likely be tedious and time consuming. Moreover, even sophisticated users might overlook or miss applicable categories, leading to an incomplete result.

Neither approach—a listing by NAICS code or a listing using multiple categories—would fully meet small business needs. They would still be extremely time-consuming and could complete incomplete results or identify collections that might only apply if other factors were also involved.

• *Building an automated, interactive system that enables small businesses to self-identify requirements that apply.* Recognizing the power of automated search engines, the BCOS team is designing an Internet portal with a sophisticated multi-criteria search capability. This system enables the user to research requirements using multiple screening tools. The user answers questions that relate to business type, size and other factors that enable the search engine to narrow the results. Depending on the answers, the user may be asked for more details to narrow the search. For example, if the user indicates an interest in environmental regulations, he or she may be asked about the hazardous materials used at their operation. While this automated, query-based system is much more reliable and user-friendly than the government-generated lists described in the preceding bullet, it is still under development. The development process is proceeding sequentially. SBA estimates that having a complete system for serving all sectors is a number of years away.

• *Ensuring access to the list.* Providing a list over the Internet would provide the most accessible and cost-effective means of meeting small business information needs. But many small businesses do not have Internet access. SBA estimates that over 10% of small businesses will not use computers in the next five years. Of those that do, owners and employees may not have the time to access and download the information while juggling other on-the-job demands. Providing a list of applicable requirements in a quick, easy to download and printer-friendly format would allow downloading at work or in other places, such as homes or libraries, where Internet access is available. Further, having an order-form of relevant publications that could be downloaded may be helpful for small business owners who do not have time to download and print documents regardless of where they physically conduct their Internet searches.

Management

• *Coordinating with multiple federal agencies.* Thirty-six agencies impose reporting and recordkeeping requirements, and all of them have unique organizational structures, processes, and systems for managing these responsibilities. Reaching agreement on a single system for identifying requirements will require extensive coordination among these agencies.

• *Designating responsibility.* Given the number of agencies involved, a single federal entity would need to be charged with overseeing the development and long-term maintenance of a system that could identify requirements applicable to small businesses.

• *Incorporating identification elements into existing requirements.* Once a methodology for identifying which requirements apply to a small business is developed, all federal information collections will have to be updated to reflect it. Incorporating industry sector identification or other identification elements into requirements all at once would overwhelm most regulatory agencies. However, under federal law, agencies must update their information collection requests—that are associated with those requirements—every three years. There are currently over 8,000 approved information collections. OMB form 83–I could be modified to require the new identification element. The information could be updated in the Reports Management System database on a continual basis as the agencies' information collection requests are submitted. OMB's review help to ensure that all requests include identification elements and agency CIO review could help to ensure the accuracy of the information. In this way, the element (or elements) needed to specify applicability could be added to all information collections and housed in a searchable database within three years.

Note: While this effort could be completed in three years, it could still represent a significant workload for agencies that have to evaluate the applicability of their requirements.

Resources

• *Cost of system development.* To build a functioning profiler or ''intelligent agent'' that asks the user a number of questions and based on the answers takes one to the appropriate information collection requirement or compliance assistance tool will cost a minimum of $200,000 for developing better accessibility to environmental, employment, taxation, and trucking regulations and compliance assistance information.

• *Cost of system operation and maintenance.* A system that enables users to identify applicable reporting and recordkeeping requirements must be operated and maintained continuously. The BCOS project should provide a basis for estimating the cost of operating and maintaining a more comprehensive system.

• *Staffing needs.* Building, operating, and maintaining a system that could provide a list of requirements will require staff from multiple agencies with reporting and recordkeeping responsibilities.

Options Considered

The Task Force identified and evaluated several federal resources that potentially could be used to generate a list of applicable requirements.

Existing Information Sources Related to Federal Paperwork and Regulatory Requirements

• The Paperwork Requirements Web site: *http://www.whitehouse.gov/omb/inforeg/infocoll.html.*

Managed by OMB; provides an inventory of current approved information collections; listed by agency; not searchable by business size or sector.

RISC/OIRA Consolidated Information System (ROCIS):

OIRA, working with GSA's Regulatory Information Service Center (RISC), is developing ROCIS. ROCIS will provide for electronic submission, review, and approval of information collections. It will also give the public the ability to see, via the Internet, what information collections agencies have submitted to OMB for review, and give the public the ability to comment electronically to OIRA about these information collections. The public will also be able to see precisely what is currently approved under the PRA.

ROCIS also collects basic information about the information collections. While the system will not be sophisticated enough to be able to determine the precise information collections with which a specific business must comply, there will be information about the regulatory provisions with which an information collection is associated.

OIRA intends for ROCIS to be in place before the end of 2003. However, because approvals under the PRA can be good for up to three years, ROCIS will not form a complete database of information collections approved under the PRA until 2006.

• *The Businesslaw.gov* Web site: *http://www.businesslaw.gov.*

Managed by SBA; provides access to a variety of tools and resources related to federal, state, and local requirements. At the federal level, it includes information about the federal regulatory process and access to the U.S. Code, Code of Federal Regulations, and **Federal Register**; offers plain English compliance assistance guides that can be used to help determine requirements.

• The Business Compliance One-Stop (BCOS): *http://www.businesslaw.gov.*

Managed by SBA and under development. Will allow small business sectors to identify what regulations apply to their operation, learn about how to comply, and find useful compliance assistance resources. Initial focus is on providing compliance assistance resources and information. In the long-term, will enable users to identify the requirements that apply to their particular operation and complete transactions online. *Businesslaw.gov,* described in the preceding bullet, is one of the early accomplishments under this initiative, and will be the portal for offering these capabilities.

• The ''*Regulation.gov*'' Web site: *http://www.regulation.gov.*

Another E-Government initiative; Sponsored by OMB and maintained by GPO; allows searches of regulations by key words; allows businesses to provide comments on Federal regulations in development; and provides links to EPA, E-Gov, the **Federal Register** and FirstGov, which links to *Businesslaw.gov.*

Options (based on the evaluations above):

1. *OMB should publish a list of requirements applicable to small business.* OMB's Reports Management System database contains information about approved information clearance packages. The Web site does not list actual regulatory requirements, nor does it list specific reporting or recordkeeping requirements. The ROCIS tool now under development will enable OMB, other federal agencies, and the public to perform searches on this database. However, there are limitations to this database. Most agencies do not categorize their information collections by business size or type. If OMB required agencies to develop such information and added it to the database, one could search for the identifying information (at least as to the clearance packages that OMB had reviewed). Using the Code of Federal Regulations reference included in the database, users could then look up the underlying regulatory requirement. However, many reporting and recordkeeping requirements are not published in the Code of Federal Regulations. And, ROCIS could not include the interactive functions contemplated under BCOS—it would only be possible to include and search on simple categorization schemes such as industry sector. Additionally, although it would be certified by agency CIOs, information included in ROCIS would still be subject to the same issues of inaccuracy or incompleteness as the information currently reported on the 83–I form.

2. *Support the BCOS project team's efforts to develop an automated, interactive system that enables small businesses to self identify applicable requirements.* This system would

include a powerful search engine—that uses multiple search elements—for identifying requirements for specific small businesses. By searching across all Federal information collections at the time of query, it would provide a complete and up-to-date list.

Recommendations

1. *Designate a federal agency to be in charge of system development.* The Office of Information Technology and E-Government at OMB has a governance structure for E-Government projects under its sponsorship, and has designated SBA to manage BCOS.

2. *Complete the BCOS methodology for identifying regulatory applicability.* If the federal budget allows, expedite development. Consider consulting with private, nonprofit, and/or academic experts with specialized expertise in delivering tailored information to clients. Also evaluate regulatory development and tracking systems managed by individual agencies to determine whether there are good models and/or system features already in use that should be incorporated.

3. *Develop a system that incorporates the BCOS methodology for identifying regulatory applicability and generates a list of applicable requirements.* Design the system with the small business owner in mind, and integrate into the *Businesslaw.gov* Web site.

4. *Issue federal guidance for adding identification elements to all information collection requests.* Once categorization methods are developed under recommendation 2, OMB should consider requiring agencies to report them on the 83–I form and allowing the public to search ROCIS based on the categorization. Because it may be impossible to include some elements of the BCOS categorization in ROCIS, OMB should review each element of the BCOS categorization to ensure that OMB only requires agencies to submit information that will be useful in the simple-search format that ROCIS provides.

5. *Complete ROCIS and link to it in Businesslaw.gov.* Until the system described in recommendation III becomes available, promote ROCIS as a useful tool for researching reporting and recordkeeping requirements. Provide a link on *businesslaw.gov* pointing to the ROCIS system as one way to begin identifying applicable information collection requirements.

Final Note

Identifying requirements for small businesses is only the first step in assuring compliance. Ultimately, any system that is built to identify requirements should also include access to information about how to comply and where to go for compliance assistance. While this recommendation is beyond the scope of this report, it does raise additional technical, management, and resource issues that should be considered in devising a long-term solution to small businesses information and compliance assistance needs (*See* below, and Appendix 7—Compliance Assistance Best Practices).

Expanding the Small Business Reporting and Recordkeeping Requirements System to Include Compliance Information—Additional Issues

Technical

Additional content to identify and incorporate. Providing compliance information would require researching and providing access to compliance assistance resources. This could be limited to federal resources, or broadened to include resources from States, local governments, or other compliance assistance providers.

• *Handling different formats.* Compliance resources may take a variety of forms, such as telephone numbers, compliance checklists, and online expert systems. The system would have to be designed to handle both simple and sophisticated products.

Management

• *Additional coordination required.* Providing compliance information would require working not only with staff that handle information collection requirements, but also with staff that have regulatory compliance responsibilities.

Resources

• *Additional cost.* Expanding this service to include information about compliance resources would significantly increase the cost (in dollars and FTEs). It would mean additional research to incorporate compliance information and identify relevant compliance assistance resources.

Legal

• *Excessive detail.* It is unlikely that compliance aids will be able to provide *all* compliance information for every business. There will likely remain the need for expert assistance to help businesses with compliance details in light of the differences among them.

Task #3: Interactive Electronic Systems (*See*, 44 U.S.C. 3520(c)(3))

Problem

Overview

The cost of finding, understanding and complying with legal and regulatory requirements poses a significant burden on businesses and is a formidable obstacle to success. One costly aspect of compliance with regulatory standards is the related paperwork.

Of the $843 billion dollars spent on Federal regulatory compliance in 2000, $497 billion fell on businesses. This comes to 63 percent of the total regulatory burden.

The Small Business Administration's (SBA's) Office of Advocacy estimates [23] the following paperwork regulatory information burden to businesses, categorized by number of employees:

• Firms with fewer than 20 employees—$2,000 per employee per year.

• Firms with 20–499 employees—cost $1,931 per employee per year.

• Firms with 500 or more—cost $1,086 per employee.

SBA research confirms that these regulatory costs continue to increase and to disadvantage small businesses.

Assumptions

• The Federal Government is firmly committed to reducing the regulatory information burden and will strongly encourage Federal regulatory agencies to make this happen.

• All regulatory agencies have a goal of reducing the regulatory information burden through amending regulations, changing information requirements, and streamlining collection processes, consistent with their mission.

• Important issues of transaction security, privacy, electronic signatures, standards, and architectures will be properly addressed by e-government initiatives and need not be discussed here.

• As time and resources allow, small businesses should help to find ways to significantly reduce the regulatory information burden.

• The Internet is a primary regulatory communication channel as use of the Net by small businesses with employees grew to 67 percent in 2001 and will be nearly 80 percent by 2003, but the Federal Government cannot use it as the sole means of regulatory communication or the sole means of providing compliance assistance.

[23] These figures are derived from impact of Regulatory Costs on Small Firms, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins.

Solution

Objectives

To reduce the regulatory burden on small businesses and increase compliance, the Federal Government is focusing on three questions:

- How can we reduce the burden of information collection requirements as part of regulatory compliance *at all levels* of government?
- How can we *use the Internet* to streamline the collection and dissemination of data from regulated small businesses?
- How can we provide user-friendly and cost effective *compliance assistance*?

Governments at all levels must reduce duplication and overlap in its data collection, coordinate data definitions and reporting periods and, of course, determine if data is needed in the first place. Further, it is not enough to improve the information demand chain. It is also necessary to look at the information supply chain, which includes assisting small businesses in identifying reporting and recordkeeping requirements, providing compliance assistance tools, and user friendly submission systems.

Strategies

We can reduce the regulatory burden by:

- Reducing the number of required data elements (by elimination or by standardizing similar elements in an e-forms format).
- Reducing the number of updating cycles (for example, from monthly to quarterly, if possible).
- Reducing the number of separate submission with similar data to different recipients (for example by having a single collection point for one or more agencies).
- Reducing the amount of historical data a respondent must keep.
- Reducing manual efforts through the use of software.
- Introducing intermediaries (professional groups, associations, or government agencies) as collection and dissemination points.

The Business Compliance One Stop Portal

The major vehicle for implementing a regulatory burden reduction solution is the Business Compliance One Stop. Its goal is to reduce the regulatory information burden on business owners by making it easy to find, understand, and comply with governmental laws and regulations. The BCOS solution is to build upon the *businesslaw.gov* platform to provide interactive electronic legal and regulatory information and compliance assistance.

The portal offers the following functionalities to the business community:

(1) *Find:* efficient access to laws and regulations at all levels of government (helps you find what applies to you as a business owner, where you live);

(2) *Understand:* compliance assistance digital guides or expert tools that will help businesses determine if they are in compliance and how to comply;

(3) *Comply:* online transactions, such as allowing businesses to register their business, apply for licenses and permits, and file information electronically.

A number of Federal agencies (*i.e.*, DOT, DOI, DOE, EPA, IRS, DOL, OSHA, INS, and GSA) and seven states (*i.e.*, Illinois, Georgia, Washington, Missouri, Iowa, New Jersey and Texas) are working together with SBA as the managing partner to build this interactive electronic system. The initiative has also enlisted the partnership of several associations to represent the business customer.

During its first year, the BCOS focused on compliance assistance in the areas of environment, workplace health and safety, taxes and employment. For its second and third years, while continuing to focus on creating compliance assistance tools, BCOS will increase the emphasis on reducing the burden that emanates from the 7.7 billion hours created by government paperwork.

Evaluations of modern forms management systems which include interactive, electronic forms as well as streamlining collection processes and harmonizing data requirements across agencies have the potential to reduce by 50 percent agency costs and the small business burden using the following three e-forms strategies:

1. Reduce the information required through analyzing if information is needed, if definitions in different forms and forms in different agencies can be harmonized to reduce overlap;

2. Increase the effectiveness of data collection processes by collecting once and sharing data among programs and agencies;

3. Reduce the work of submitting data by using interactive, electronic, forms that aid the user.

The BCOS initiative will initially concentrate on highly regulated industries such as trucking, health care, food, and mining.

BCOS Results

BCOS has demonstrated that using interactive electronic systems (Internet) is a cost effective way of reducing regulatory burden. Currently there are over 270,000 accesses per week to our BCOS platform, Businesslaw.gov, which features a number of our results, to include:

Created a Single point of contact for legal and regulatory assistance—the BusinessLaw portal: BCOS uses BusinessLaw.gov as its platform for electronic interaction with users. This portal provides nearly 20,000 links to federal and state legal and regulatory information on 39 different topics, where to go to complete transactions such as licenses and permits, and a host of information on rulemaking, compliance assistance, and regulatory fairness. The portal also offers useful information on where to get help, how to contact Congress and associations, and principal considerations in choosing legal help. The site is adding new navigation aids, additional digital guides or expert tools, and user-friendly transactions.

Developing Compliance Assistance Guides: Several guides have been built, including:

- Alien Employee Visa Classification eTool
- Employment Eligibility Verification (I–9) eTool
- OSHA emergency building evacuation procedures eTool
- Choosing a Legal Structure eTool
- Auto Dismantler & Recycler Environmental Audit Advisor
- Motor Vehicle (Class V) Waste Disposal Wells Advisor

Integrated State Registration and Federal Employer Identification Number (EIN) Application: This web services application demonstrates that significant savings can ensue when state and Federal processes are integrated and offered as a single web services. State business registration requires many of the same data elements as the Federal Employer Identification Number (FEIN) submission. This tool permits the user to apply on-line for a state registration and then elect to apply for a FEIN, which is pre-populated with data from the state application. For additional information, the application asks for additional data in an interview format. IRS estimates that more than 2.4 million businesses acquire EINs annually.

Coal Mining Report Harmonization: This BCOS project is an excellent example of an e-forms solution. Agencies worked together to reduce the information burden on nearly 1,000 coal miners who submit reports to DOI, DOE, EPA, DOL, IRS, and State EPAs. Eighty percent of the data in these reports are identical and require about 50,000 hours annually. A tool developed by DOI

provides a one-stop submission of data that is then distributed to participating agencies. Data metrics using different definitions is automatically changed to the metric required by each agency and results in an estimated 25,000 hours saved. As the project has been progressing, agencies have begun to look at streamlining definitions, reporting periods and the need for the information in the first place.

Developing the Profiler: This tool allows the user to provide information based on a profile of factors such as location, size, industry and type of business entity and business life cycle as well as desired assistance. Based on specific answers, the tool then refers the user to compliance assistance resources from five major Federal Regulatory Agencies.

Trucking One-Stop Portal: Trucking is an important industry, contributing one out of every 12 jobs. We have completed the project plan for building an integrated state and federal one stop for trucking, offering an example of how using harmonized data capture, electronic forms and transactions, and offering web services for both Federal and state requirements can work for a specific industry.

The BCOS offers businesses a significant reduction in the Regulatory Information Burden. Estimates of annual savings show savings have already been realized. Examples include:

- The *BusinessLaw.gov* portal reduces the time for users to find, understand and comply with regulations. Estimated annual savings: $56 million.
- The Profiler provides estimated savings of $62 million.
- Each compliance guide provides an estimated savings of $10 million to businesses and $400,000 in agency administrative costs.
- The harmonized coal mine reporting system will reduce the regulatory information burden in half or about $1 million.
- The Integrated State registration and Federal Employer Identification Number Application has estimated savings of $96 million.
- The Bureau of Citizenship and Immigration Services interactive I–9 electronic tool offers an estimated savings of $12 million.
- The planned Trucking one stop industrial portal will have estimated savings of $400 million.

More information on BCOS is provided in Appendix 6.

Recommendations

The team presents the following primary recommendations:

1. Consistent with the President's budget, fund the BCOS as a platform for the Federal government's cross-agency paperwork reduction initiative, focusing on creation of e-forms solutions, additional interactive expert tools, intelligent agent profilers, innovative navigation aids and search engines, and online transactions specific to various industries.
2. Work with industry to develop standards for information collection and dissemination.
3. Work with industry trade associations to determine fruitful areas for streamlining and harmonization of data requirements and look for ways that associations can become viable trusted collection and dissemination points. This includes determining specific forms or industries where the return on investment for using interactive electronic transmission of information is high (*e.g.*, the IRS 2290 for truckers).
4. Implement demonstration projects for these identified high burden areas where Internet technology is used, expert tools are integrated with electronic forms, and business models are developed including the concept of intermediaries or collection/dissemination points (*e.g.*, extend the coal miner application to all miners; implement portals that reduce the information burden for different industries).
5. Partner with the private sector to develop online tools that will do the following:

- Help specific industries simplify their recordkeeping and extract data to satisfy the demand for regulatory information.
- Enable electronic transmission of compliance information.

The team has suggested a number of additional activities that, taken together, will help reduce the regulatory burden. They include:

Approach Change Incrementally. Select each year a limited group of stakeholders to provide input on reducing information collection burdens. For example, one could approach reducing the information burden industry-by-industry with clearly established goals set for improvement. Start with the five major industry clusters the first year, and then address the next five industries the following year. This process could involve setting up panels with members from the affected industries to assist in identifying information requirements, as well as members from State governments, other affected stakeholders, the general public, and Federal agencies.

Industrial Classification. BCOS needs to promulgate, in coordination with the regulatory agencies and private sector, an industrial classification nomenclature that will accurately describe the target regulated industries in ways that reflects the structure of regulatory programs and without the detailed complexity of NAICS.

Using BCOS to Identify Duplication. The PRA requires agencies to self-certify that existing and proposed information gathering systems do not duplicate or overlap those of other systems in the same agency/department. Agencies should participate in the BCOS initiative to provide a common front end for regulatory requirements industry-by-industry.

Study Organizational Data Collection Approaches. The ideal organizational system for collecting and disseminating regulatory information among federal, state and local levels is not yet clear. Steps should be taken under the aegis of BCOS to partner with state and local government as well as the private sector to explore innovative approaches to information collection and dissemination industry by industry. New technology holds promise for facilitating collection and transfer of information. Best practices should be studied in industry as well as Federal, state, and local levels and demonstration projects should be carried out and evaluated.

Raise Awareness among Government Employees. All changes in culture and attitude and all transformations of process require training. One cannot simply assume that government agencies will suddenly discover how to do things differently. Sharing best practices and developing good practices would be part of a training effort. Part of this training would include the ways in which small businesses are different from larger businesses and how this affects regulatory compliance.

Develop a Cross-Agency Initiative. Pattern this initiative after the successful E-government initiatives where the significant information gathering agencies would work together to reduce the information required, streamline the collection and dissemination of information, and share best practices.

Provide List Of Laws, Regulations And Compliance Assistance Tools on BusinessLaw.gov. Require Agencies to post and maintain list by industry of applicable regulations and laws as well as compliance assistance tools and publications on *BusinessLaw.gov.*

Publish standards for Electronic Data Streams. Harmonize data elements, business rules and XML standards. In

this manner third parties such as software companies and intermediates could where practicable assist small businesses in providing the information in much the same manner that Intuit assists small businesses file their taxes.

Encourage Agencies to Utilize ''Smart'' Electronic Forms. These forms would include components that provide immediate feedback to assure that data being submitted meets requirements of format and are within the range of acceptable options for each data field. This would be similar to the aforementioned tax preparation software. On these programs, if you enter an illegal value in a blank, you are given an immediate error message. Or, if the program finds that you need to fill out a Schedule C, it automatically pops you over to that schedule, you fill it out, and it pops you back to the your form 1040, and translates the data from the Schedule C onto the form 1040. These programs also have handy pop-up windows that explain terms and definitions, and provide cross-references to the regulations. This should be a model of the user friendliness and efficiency that we should strive to implement in government forms. Agencies should accept electronic submission of forms to avoid errors when paper forms are manually transcribed

To this end, we would recommend an evaluation of the following requirements.

(1) When an agency submits a form to OMB for approval and assignment of an ''OMB control number,'' OMB should review the collection for compliance with GPEA. The agencies should provide web services transactions, not just e-copies of paper forms.

(2) Any computation should be built into the form. Data that appears in more than one field should be copied automatically.

(3) The submitting agency should include form field validation parameters at the time that the electronic form is submitted to ensure valid data entry.

(4) All electronic forms should contain instructions in the form of pop-up windows to explain to the user why the form field is invalid as well as definitions of terms, statutes, reference data, and, where applicable, worksheets for computing entries.

Implementing these improved, ''smarter'' forms will, of course, cost the government time and money. Agencies will have to spend time designing the electronic forms, and determining the validation parameters. OMB will have to spend additional time in reviewing the forms and verifying the completeness of the validation and pop-up help screens. However, the return on investment will be significant for both governments and businesses.

Critical Success Factors

The Task Force envisions several critical success factors in achieving the desired paperwork burden reduction and user-friendly compliance assistance:

- Effective collaboration among and between the regulators;
- Commitment of the regulated community and their associations;
- Commitment to developing a critical mass of users, infrastructure and tools to ensure rapid implementation of E-forms;
- Public-private partnerships and use of ''best practices'' to deliver the tools;
- Use of proven, affordable technologies to deliver compliance assistance to small businesses in a one-stop, single format manner;
- Agreement on appropriate business models to illustrate who funds, develops, owns and maintains the web services;
- Agreement on financing strategy that highlights shared services and clarifies who manages the relationship with the user, controls the data, and owns the transaction.

Appendix 1—44 U.S.C. 3520, Public Law 107–198

[*See http://www.acess.gpo.gov*]

APPENDIX 2.—SMALL BUSINESS PAPERWORK RELIEF TASK FORCE MEMBERS

Agency	Member	Title
Office of Management and Budget	Mark A. Forman	Associate Director for Information Technology and E-Government.
Office of Management and Budget	John Graham	Administrator, Office of Information and Regulatory Affairs.
Department of Labor	Dana Barbieri	Associate Assistant Secretary for Policy.
Department of Labor	Lois Orr	Deputy Commissioner, Bureau of Labor Statistics.
Department of Labor	Cheryl Kerr	Special Assistant to the Commissioner, Bureau of Labor Statistics.
Department of Labor	Jeff Koch	Special Assistant to the Assistant Secretary for Administration and Management.
Department of Labor	Steven Witt	Director, Standards and Guidance, Occupational Safety and Health Administration.
Small Business Administration	James M. Van Wert	Expert Advisor to the Chief Operating Officer.
Small Business Administration	David Javdan	General Counsel.
Small Business Administration, Office of Advocacy.	Thomas M. Sullivan	Chief Counsel for Advocacy.
Department of Transportation	Eugene Taylor	Acting Chief Information Officer.
Department of Treasury	Neil Eisner	Assistant General Counsel for Regulations and Enforcement.
Internal Revenue Service	Michael R. Chesman	Director, Tax Payer Burden Reduction.
Internal Revenue Service	Sherrill A. Fields	Deputy Director, Tax Payer Education and Communications.
Department of Health and Human Services.	Daniel Troy	Associate General Counsel.
Department of Health and Human Services.	Ruben King Shaw	Deputy Administrator and Chief Operating Officer, Centers for Medicare and Medicaid Services.
U.S. Department of Agriculture	James E. House	Director, Small and Disadvantaged Business Utilization.
Department of Interior	Robert Faithful	Director, Small and Disadvantaged Business Utilization.
General Services Administration	Mary Mitchell	Acting Deputy Associate Administrator, Electronic Government and Technology.
Environmental Protection Agency	Stephanie Daigle	Acting Deputy Associate Administrator, Policy, Economics and Innovation.
Environmental Protection Agency	Karen Brown	Small Business Ombudsman.
Department of Commerce	Janet Schwalb	Special Assistant to the Chief Financial Officer.
Department of Commerce	Karen Hogan	Deputy Chief Information Officer.

APPENDIX 3.—CONTRIBUTING STAFF

Agency	Member	Title
Office of Management and Budget	Donald Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs (OIRA).
Office of Management and Budget	Jefferson Hill	Senior Advisor, OIRA.
Office of Management and Budget	Stanton Anderson	G2B Portfolio Manager.
Office of Management and Budget	Jo Armstrong	SBPRA Project Manager.
Office of Management and Budget	Bryon Allen	EPA Desk Officer, OIRA.
Office of Management and Budget	David Rostker	SBA Desk Officer, OIRA.
Office of Management and Budget	Cristal Thomas	DOL Desk Officer, OIRA.
Environmental Protection Agency	Joan Crawford	Special Assistant, Office of Policy, Economics and Innovation.
Environmental Protection Agency	Sandy Germann	
Environmental Protection Agency	Doreen Sterling	Associate Director, Collection Strategies Division, Office of Information Collection, Office of Environmental Information.
Environmental Protection Agency	Jim Edward	Director, Compliance Assistance and Sector Programs Division.
Environmental Protection Agency	Tracy Back	
Internal Revenue Service	Margie Kinney	Program Analyst, Office of Tax Payer Burden Reduction.
Internal Revenue Service	Ron Kovatch	Senior Advisor, Office of Tax Payer Burden Reduction.
General Services Administration	Frank McDonough	Director, Office of Intergovernmental Solutions.
Department of Health and Human Services.	David Elizalde	Centers for Medicare and Medicaid Services.
Department of Labor	Jennifer Silk	Deputy Director, Standards and Guidance, Occupational Safety and Health Administration.
Department of Labor	Todd Owens	OSHA Clearance Officer.
Department of Labor	David Gray	Deputy Assistant Secretary of Labor.
Small Business Administration	Shawne McGibbon	Deputy Chief Counsel for Advocacy.
Small Business Administration	Suey Howe	Director, Interagency Affairs, Office of Advocacy.
Small Business Administration	Keith Holman	Assistant Chief Counsel, Office of Advocacy.
Small Business Administration	Ernst Nilsson.	

Appendix 4—Results of SBA Office of Advocacy's Outreach Activities

SBA Office of Advocacy Observations Regarding Implementation of the Small Business Paperwork Relief Act of 2002, Based on Comments Submitted to the Office of Advocacy by Small Business Representatives

1. *Single Point of Contact.* Small business representatives stated that a single point of contact for paperwork/information collection requirements within each agency would be extremely beneficial. They recommend that the single point of contact be the Chief Information Officer (CIO) or an analogous official within each agency who is responsible for compliance with the Paperwork Reduction Act (or that person's representative). Small business representatives believe that the single point of contact needs to have sufficient authority and the resources to be able to truly function as a single point of contact. Finally, they suggest that the single point of contact within each agency be clearly identified to the public and to agency personnel. From the Office of Advocacy's experience in communicating with small businesses, the designation of an effective single point of contact within each agency will be critical in achieving the burden relief objectives of the Act.

2. *Overlapping/Duplicative Reporting.* Small business representatives cited the need to repeatedly submit the same information to a single agency as a major paperwork burden. They suggest that agencies periodically review and eliminate duplicative reporting requirements. The single point of contact for paperwork within each agency would be uniquely situated to identify such overlapping, duplicative reporting requirements and recommend their elimination.

3. *Compliance Assistance.* Small business representatives stated that agencies should provide more effective paperwork compliance assistance to small businesses. Concise, plain-language compliance guides would be helpful. Currently, small business representatives complain about compliance guidance that is complex, outdated, misleading, or voluminous, leaving the small business more confused that when the guidance was first consulted. Small businesses have told the Office of Advocacy that compliance hotlines are also very useful. Certainly, compliance assistance hotlines such as the Internal Revenue Service's Tele-Tax assistance network have proven to be very helpful to regulated entities.

4. *Paperwork Utility Review.* Small business representatives believe that it would be beneficial for agencies to periodically review their information requirements and assess whether the required information is still necessary or even useful.

5. *Catalogue of Required Paperwork Requirements.* Small business representatives stated that a catalogue of reporting requirements would be useful and would enhance their ability to identify and comply with paperwork and information collection requirements. They believe that such a catalogue can and should be categorized by NAICS code. Ultimately, small businesses would like to be able to enter their industry code and see all of the paperwork requirements that apply to them.

6. *Use of Enforcement Discretion.* Small business representatives suggested that agencies waive penalties for first-time paperwork violations, especially where a small business has sought out and followed advice from a hotline or other agency contact. One suggestion is for agencies to develop a mechanism to track calls to hotlines or other compliance assistance requests (*e.g.*, a confirmation number is provided to the small business at the conclusion of the contact), so that the small business can demonstrate that the contact was made. Agencies can use their existing enforcement discretion on a case-by-case basis to respond to these situations.

7. *Paperwork Retention Requirements.* Small business representatives noted their concern with record retention requirements that may add significantly to the overall paperwork burden. They believe that paperwork retention requirements should be periodically evaluated and unnecessarily long retention periods should be shortened where appropriate.

8. *Electronic Paperwork Reporting.* Small business representatives pointed out that many small businesses still rely on paper, and are unlikely to become computerized in the near future. Agencies should not assume that Web-based paperwork filing is a solution to the paperwork burden.

Summary of Public Comments on Implementing the Small Business Paperwork Relief Act of 2002, Excerpted From the Transcript of a Public Meeting Held March 4, 2003, and Written Comments Submitted to the Office of Advocacy

1. Paperwork Retention Requirements

• ''Part of the problem with understanding paperwork on small business is * * * the amount of time that [small businesses] have to spend in collecting the data that back those forms for that data, and certainly retaining that data in a manner in which they're able to replicate it for organizations

like the IRS.'' Giovanni Coratolo, U.S. Chamber of Commerce, p. 18

• ''[W]e may want to add to the discussion * * * recordkeeping in terms of how long folks have to keep these records. I mean I know it varies whether it's 30 years, by agency, but shoot, I would love to know the compliance rate on that in terms of folks. I think that's something that also needs to be looked at.'' Susan Eckerly, National Federation of Independent Business, p. 32

• ''[O]ne of the things that we frequently hear about, particularly in the tax area, the burden of having to keep those records. And you've got to remember, as I pointed out earlier, not everybody has an empty CD–ROM of all this, which is probably one good way to store it. A lot of people just have huge-you know, think of a tool and die shop, just huge file folders in a dusty corner of a room with all this stuff in it, or think of a gas station, if they even have it anymore.'' Susan Eckerly, NFIB, p. 83.

• ''The House Small Business chairman in 1995 amended the '95 Paperwork Reduction Act to require that the clearance process and the single agency officials put on every single recordkeeping requirement that exists in the system a record retention requirement. That is a matter of law. It reads in 3506(f) now, for each recordkeeping requirement, the length of time a person's required to retain their records specified * * * we would save hundreds of millions of dollars if we could just move to that point. ** * * I think if you go into the existing inventory today, which exists—you can look at it—and count the number of times we have recordkeeping requirements established in law that do not express what the record retention requirement is, you would be in the thousands of specific examples, thousands. * * * They're there now and thousands of examples amounting to hundreds of millions of dollars in burden.'' Bob Coakley, p. 86–9.

2. Duplicative Paperwork Requirements

• ''With the IRS, one area that I thought was very good that had some momentum behind it was the STAWRS [Simplified Tax and Wage Reporting System] program, where the IRS eliminated the duplication of submissions to the IRS and the states and from what I understand, that program's completely—not only has it not gone forward, it is completely erased.'' Giovanni Coratolo, U.S. Chamber of Commerce, p. 19.

• ''I do a lot of OSHA issues and I know OSHA last year had put forward a proposal as part of the Paperwork Reduction Act to get rid of a lot of duplicative and excessively redundant stuff. I think that's a good start they've done, which they need to be commended for doing that.'' Chris Tampio, National Association of Manufacturers, p. 21–2.

• ''I hear a lot about duplicative reporting about EPA. There are four different media offices. They all ask the same questions in different ways and people end up reporting the same data with a slightly different twist and I don't know if this report can address that because many, many of those requirements are statutory. * * *'' Fern Abrams, IPC, p. 26.

• ''I know with the IRS, they just deleted the requirements of filling out Schedule L and M and when they examined it they found it was not used. Here were millions of hours of paperwork that was being required, plus the data collection by small businesses, and they weren't being used.'' Giovanni Coratolo, U.S. Chamber of Commerce, p. 34.

• ''Another thing with regard to the single electronic reporting system or sort of addressing the duplication, we tried to ask our members what agencies are the worst with regard to duplicative paperwork. The anecdotal information we received, they tend to say that duplications within the agencies * * * if there are two representatives from the Department of Labor, ask them have you ever taken the Wage and Hour paperwork requirements, reporting requirements, matched them up with OSHA? Those are some instances that we hear about. And is there any way you can try and merge that? That would be a suggestion with respect to that.'' Susan Eckerly, NFIB, p. 82–3.

• ''I'd ask if it's within the purview of this Task Force to look at where state regulations can be synched-up more with federal regulations because there's a lot of duplications there, as well.'' Fern Abrams, IPC, p. 85.

• Examples of Duplicative Reporting in the environmental arena:

—Hazardous waste shipments on both RCRA biennial and annual SARA TRI.

—Annual air emission fees (for those states or air districts that require them) and SARA TRI reports—pound for pound TRI chemicals virtually identical.

—WW discharges for certain pollutants that are SARA TRI reportable. Although most WW reports are concentration based, some are mass based and getting annual totals is a matter of adding.

—Tier II reports and California HMBP were duplicative until Reg. 9 issued July 27, 2001 letter confirming that California facilities submitting HMBP annual reports did not have to file Tier II reports.

—Some states duplicate federal TRI reporting with same chemicals. (Massachusetts and Form S)

—Some states require duplication of hazardous waste quantities for waste min/P2 reports (New York's HWRP and California's SB 14)

—All compiled by Fern Abrams, IPC.

3. Single Point of Contact

• ''I think small business people, they want to comply with regulations and paperwork and stuff but the biggest problem they have is compliance assistance. In all the agencies, in IRS, in OSHA, at the Department of Labor, in Wage and Hour and everywhere, I think having more people there to help with compliance assistance is a key that these people want.'' Chris Tampio, National Association of Manufacturers, p. 20–1.

• ''[o]ur members really do need help with some of this paperwork. A lot times it's very—I mean you get down to environmental reporting on very technical issues and they're very specific and what they really need is simplification. They don't need more long written guides or helpful compliance guides where instead of now having 20 pages of forms with 200 pages of directions, we now have 300 pages of guidance on top of that, which is often more regulatory interpretation instead of really being helpful.'' Fern Abrams, IPC, p. 27.

• ''If we create a series of single agency contacts outside the rubric of these chief information officers and their statutory authority and responsibilities, how can we expect them to work? It's either got to be them, a point Susan [Eckerly] alluded to, or it's got to be somebody reporting to them. Then the CIO's have to understand that [information resources management] includes public burden and small business. And if they think about it and if they follow what the president * * * wants done, small business would be pretty high on that list and we will begin to see an ability to attach these problems.'' Bob Coakley, p. 50.

• ''[i]f each [agency] had the list, not only their chief information officer but all the ombudsmen they have or all the points of contact, that potentially small business would go to, that might be a useful exercise, to just get all those, everybody's list together in terms of when you try to figure out who should be the single point of contact.'' Susan Eckerly, NFIB, p. 73.

• ''Not only is there a complex web of who is a small business ombudsmen, and I'm using that as just a general term, but there's no mechanisms for accountability in a lot of agencies * * *. So there's been a long-term problem. Department of Labor I'll use. They have—and I don't even know if this position's filled now because I just ignore it—their small business outreach person or ombudsmen for the entire department and it's always just this office that they'd say hi, we'll send you a brochure. So it never was very useful. And what's important on that point, not only is the person accountable but the agency's accountable * * * '' Anita Drummond, ABC, p. 73–4.

• ''Imagine being somebody out in Loma Linda, California or whatever, calling Washington, D.C. information and asking for the Department of Labor. They say I'm a small business and I'm trying to comply with the wage and hour laws; who can I talk to? Well, if the personnel operator, the operator who answers that line, I think that's the key thing right there. Those front-line telephone operators need to be able to direct that person, * * * no matter who [is the single point of contact], whether we have them set up as a full department, an ombudsman, or one-stop call * * *'' Larry Fineran, National Association of Manufacturers, p. 91.

• ''We should examine the possibility of recommending to the agencies the responsibilities this [single point of contact] should be assigned * * * should the appointed small business official report annually to the Office of [Advocacy]?'' Jim Tozzi, Center for Regulatory Effectiveness.

• ''It's important to establish what the relationship will be between the point of contact identified by the legislation and (1) the chief information officer who is charged with administering the Paperwork Reduction Act; (2) the small business ombudsperson who is appointed by several agencies; and (3) the office of small business that various Cabinet departments have set up. If this provision is to be implemented effectively, it is important that not another overlapping

office be created to meet this requirement in the 2002 law.'' Susan Eckerly, NFIB.

4. Catalogue of Required Reporting

• ''One thing that we * * * consistently argued for is the catalogue of reporting requirements * * * I think that it doesn't make sense to me that you can't go one place, maybe not every single paperwork requirement, but most of them, divided by SIC code. It just doesn't make sense to me that you can't have that.'' Susan Eckerly, NFIB, p. 81–2.

• ''But in addition to that idea of a catalogue, a nifty electronic edition that be (sic) an export system along the lines of Tax Cut, where you put in your SIC code and start answering very basic questions that would then take you to the regulations that would apply to you.'' Fern Abrams, IPC, p. 84–5.

• ''The catalogue of reporting requirements. That system of information, that database already exists. It shouldn't be hard * * * it should not be a task.'' Bob Coakley, p. 86.

• ''The Task Force should clearly identify and recommend that any catalog of regulatory paperwork collection requirements be broken down according to these different manufacturing processes. Creating a catalog in such a manner would greatly enhance the ability of small business owners to comply with underlying laws and regulations on paperwork and information collections.'' Danielle Waterfield, Screenprinting and Graphic Imaging Association International.

• ''The federal government should have in one place a definitive list of the paperwork requirements imposed on small business. * * * Given the paperwork and regulatory demands placed on small business, the federal government should be able to fulfill its end of the bargain and publish a list categorized by the NAICS code. It would be wonderful if businesses could access this via CD–ROM, through their trade association, or off the internet, among other places.'' Susan Eckerly, NFIB.

5. Agency Accountability/Review of Agency Compliance With Paperwork Laws

• ''[w]e really have to look at what the agencies are spending and dedicating their efforts to * * * I know we have a section 610 under SBREFA that asks agencies to review rules. Why shouldn't there be a 610 for paperwork, where they actually have to review the paperwork requirement every so often within the agency? And this should be under the guise of OMB to enforce this.'' Giovanni Coratolo, U.S. Chamber of Commerce, p. 18–9.

• ''I recommend that this Task Force have some sort of recommendation of a 610-like provision where agencies could have a certain period of time where they would have to review their forms * * * so when I refer to 610 I'm not referring to 610 out of SBREFA but something similar that would be recommended by this Task Force to the agencies that every so often they would have to review these forms and have certain assets dedicated to examine whether this information is useful or not or is being used.'' Giovanni Coratolo, U.S. Chamber of Commerce, p. 33–4.

• ''The mantra of the small business community is we don't need new laws, we don't even need new administrative initiatives; what we need is an executive branch to follow up on the laws that exist so that we give integrity to the regulatory process and we can participate meaningfully * * * we need to get rid of the benign neglect and that'll take political leadership * * * we need the president to ask the agencies to make it a priority to follow the procedural requirements of law that we already have won and put in place and that ought to be done.'' Bob Coakley, p. 45–6.

• ''My brother works for the Federal Trade Commission and he was reviewing a regulation one time with one of his colleagues and his colleague—this was before SBREFA was passed, by the way—he said, well what about this Reg Flex review? He said, 'Don't worry about that. It's not enforceable anyway, so we don't have to do that.' I think unfortunately that's the attitude of a lot of federal officials, not all of them certainly, but many of them * * * I would suggest that you look at ways to implement the paperwork requirements that go beyond simply having them review them. Maybe some type of judicial review or maybe you need to create some kind of incentive from the agency's perspective.'' Brad Frisby, National Mining Association, p. 55–7.

6. Penalty Waivers/First Time Abatement of Penalties

• ''I do a lot of OSHA issues and instead of having so many people that are there playing gotcha for a manufacturer that might have a paperwork violation, why not instead have someone go there and try to assist them in not just the recordkeeping but trying to make it a safer workplace instead of giving them a violation for not having their material safety data sheets or something like that * * * let's take some of the resources from a lot of their heavy-handed enforcement to compliance assistance.'' Chris Tampio, National Association of Manufacturers, p. 23.

• ''I also work with OSHA issues * * * and I actually view OSHA as much more of an outreach and helpful to small businesses and the like, and I'd like to see EPA go more that way, that OSHA actually has programs where they reach out and help businesses comply * * * '' Fern Abrams, IPC, p. 26.

• ''[t]here's a lot of problems with contractor-staffed hotlines where the people answering the questions don't really know the answers. They're making stuff up. And then the agencies, and I believe this is true of the IRS, as well, don't have to be held to the advice that is given out by their hotline. So someone can get advice, take it, and still be slapped later with an enforcement violation.'' Fern Abrams, IPC, p. 27–8.

• ''[w]hat's important * * * not only is the person accountable but the agency's accountable, and this is a problem that came up during the last administration and I can't remember how it was resolved in the Department of Labor but they put out compliance guides and you could follow the compliance guide but you could still be cited if you follow the compliance guide because there was an error in the guide. So the agency was not accountable for having accurate assistance materials. The person wasn't accountable, the person or the program wasn't accountable, and the materials, there was no reliability in them.'' Anita Drummond, ABC, p. 74–5.

• ''I think it's incumbent on the Task Force to actually strengthen [the suggestion of first-time abatement of penalties] and recommend that [agencies] come out on record as saying that they will have a first-time abatement of penalties based on minor paperwork infractions.'' Giovanni Coratolo, U.S. Chamber of Commerce, p. 75–6.

• ''[w]hat is the ultimate goal of the regulatory system? * * * The ultimate goal is voluntary compliance * * * so to the extent that agencies make it easy to comply, then they are furthering their goal, whether it's a safer workplace or whether it's a better environment, what have you. So I think that the agency mindset still needs to be that voluntary compliance is their goal, not how many citations have they made * * * '' Larry Fineran, National Association of Manufacturers, p. 90–1.

7. Electronic Paperwork Reporting

• ''I'll be the first to say our members are way behind in [technology]. The average size of our membership * * * is very small, less than 10, and a lot of these people are now having computers but they don't use their computers necessarily to be on the Web, so they're not going to get on EPA's Web site and all of a sudden have one magic form and fill all that out.'' Susan Eckerly, NFIB, p. 29–30.

• ''[a]gencies * * * see a great opportunity in making everything electronic, that somehow this is going to achieve the greatest type of reduction and it's also perhaps the most cost-efficient for an agency, but the reality of small business, the reality of those that actually have to go through this if they're going to fill out their own forms, more often than not the electronic option isn't available to them. So although [electronic reporting] is often the main way * * * in which agencies choose to reduce their overall burden numbers * * * it still isn't taking care of those who have the toughest part of the burden, which is those that are still filling out paper.'' Rosario Palmeri, House Committee on Small Business, p. 533.

• ''I think there's still very large problems with the [EPA's] e-docket. I think it was a tool that was established to try to help small business * * * I even find it complicated and I've done this for 15 years. I get lost in it. I can't find some of the e-docket materials that EPA says are on the various dockets.'' Theresa Pugh, American Public Power Association, p. 65.

• ''[t]here are a lot of people who are still on paper, especially in the small businesses who don't have computers or worse yet, have computers but they're dial-up computers and they're on one person's desk and when you start looking at 500 or whatever page things, it could take them hours to download it. So I think we need to look at the high-tech solutions that we didn't have a few years ago but we're not quite ready to replace the paper.'' Fern Abrams, IPC, p. 84.

• ''I wanted to suggest that the Air Office, at least at EPA and perhaps some other agencies, have a bad habit of establishing databases to indicate both paperwork and actual regulatory compliance costs and on some small business areas it's left blank. If you don't know any better and you read that, it look like there's no regulatory requirement * * * it sort of leads one to believe that they're not being regulated when they will be regulated.'' Theresa Pugh, American Public Power Association, p. 93.

8. Miscellaneous Comments

• '' * * * I sat through an IRS paperwork reduction meeting. It was part of their normal review of forms and instructions. This one happened to be on taxes filed by small farmers and they devoted, I think, about 25 minutes of their eight-hour session on this particular set of forms to paperwork reduction * * * But what we found is that the IRS, in figuring out who to put together in terms of a meeting to talk about paperwork reduction, they didn't have a single farmer, they didn't have a single representative from a farm trades or any other small group. They put together a group of practitioners who essentially were accountants * * * they start with the assumption that no small business and no farm is actually going to fill out their own taxes * * * and when they start from that basic assumption, they assume that the types of corrections and the types of things they want to do or make clarifications to are from a practitioner's standpoint rather than from the individual standpoint.'' Rosario Palmeri, House Committee on Small Business, p. 51–2.

• ''If there were some way we could come up with a clever way of rewarding employees in various agencies * * * if there was a way that the regulatory agencies * * * would recognize the leadership of employees for taking a creative approach in trying to reduce regulatory burden in a responsible way * * *.'' Theresa Pugh, American Public Power Association, p. 66.

• ''And I wanted to comment briefly on the same-time reporting option on your list * * * I hear negative feedback about that. Companies like that things are spaced out through the year so that they can spread the workload over the one or two or three people or however many they have who handle the reporting requirements, and that if it were all due at one time of the year, they couldn't have that one person.'' Fern Abrams, IPC, p. 85.

Appendix 5—Federal Government Initiatives To Reduce or Streamline Reporting Requirements for Businesses

Currently there are a substantial number of Federal government efforts in operation or in development that use one or more of the approaches to reduce paperwork burden for businesses, as described in the task one section of this report. Several examples follow:

1. The Food and Drug Administration (FDA) has harmonized its new drug application and biologics application forms which can be submitted electronically. Previously, there had been 21 different application forms. A second FDA example is its work underway with the European Union and Japan to harmonize product approval application requirements and adverse event reporting. As a result of this work, businesses will be able to collect and submit essentially the same information in the same format to satisfy many countries' pre-approval and post-marketing requirements for drugs and biologics.

2. Below are two examples of cross agency consolidations of reporting requirements are instructive.

(a) The Single Source Coal Reporting project, which involves several Federal agencies plus at least 1 state, consolidate reporting by coal producers on their production activity to a single point; using one form, common data definitions where practical and beneficial, and synchronized reporting with respect to timing.

(b) The Employee Benefits Security Administration (EBSA), the Pension Benefit Guaranty Corporation (PBGC), and the Internal Revenue Service (IRS) jointly collect data from businesses on benefit plan operations using a single form. In the year 2000 the 3 agencies together streamlined the information required to be reported on the form and implemented an electronic filing and processing system. The single report is filed with a contractor who then distributes the appropriate information to each of the 3 agencies.

3. The IRS has expanded the use of the Internet and web-based technology to reduce burden on small businesses. The Small Business Community Web Site provides a variety of information, tools and products to make it easier for small businesses to comply with tax laws.

4. The Social Security Administration for many years has received Forms W–3, Transmittal of Wage and Tax Statements, and Forms W–2, Wage and Tax Statement, on behalf of both SSA and the Internal Revenue Service. SSA collects the data from employers, transcribes the paper documents not filed electronically, posts the data to their own files and provides the data to the IRS.

5. The Occupational Safety and Health Administration (OSHA) and the Bureau of Labor Statistics (BLS) collect occupational injury and illness data from individual employers in annual sample surveys. By law, BLS cannot share micro-data collected from businesses with non-statistical agencies. Although BLS is barred from sharing data with OSHA, the two agencies have developed sampling methodology and reporting procedures designed to reduce the burden on businesses in both surveys by minimizing overlap between the 2 surveys and providing businesses the opportunity to use a single form for reporting if they so choose.

6. The Department of Transportation (DOT) currently has two initiatives for consolidating reporting requirements. The first initiative consolidates reporting requirements for six of its agencies into a 1 page form for businesses to report the results of safety-related drug and alcohol tests for nearly 10 million safety-sensitive employees. This new form also reduces the number of data elements. The Coast Guard will continue to participate in this system after it is transitioned to the Department of Homeland Security.

Another noteworthy effort underway at DOT is the creation of a new application form and uniform reporting requirements for the disadvantaged business enterprise (DBE) program. At this time a business seeking certification as a DBE must fill out a different form for three DOT agencies and for multiple state and local agencies. The new form will be used by federal, state and local agencies.

Appendix 6—The Business Compliance One Stop as a Platform for Regulatory Burden Reduction

Background

SBA is the managing partner for the Business Compliance One Stop (BCOS), an initiative that is a framework for achieving the goals of the (SBPRA) Task Force.

The goal of the BCOS is to reduce the burden on business owners by making it easy to find, understand, and comply with governmental laws and regulations. The BCOS solution is to provide businesses with a single point of access to information and tools that will make it easy for them to comply. The portal offers value to the business community in three areas:

(1) *Find:* efficient access to laws and regulations at all levels of government (helps you find what applies to you as a business owner, where you live);

(2) *Understand:* compliance assistance digital guides that will help businesses determine if they are in compliance and how to comply;

(3) *Comply:* online transactions, such as allowing businesses to register their business, apply for licenses and permits, and file information electronically.

As the advocate and supporter of small businesses, SBA is the managing partner for the following reasons:

• *Core Mission*—Small businesses comprise 99 percent of all business. With its legislative mandate to help small businesses succeed, SBA ''owns'' the relationship with the intended beneficiaries of the initiative.

• *Outreach*—The intergovernmental scope of the project gives SBA another advantage, as no other federal agency has the breadth and depth of grassroots partnerships and experience with business development entities in over 1500 locations.

• *Relationship with the Regulatory Community*—SBA works more closely with the federal regulatory community than any other agency through its congressionally created offices of Advocacy and National Regulatory Ombudsman. Building appropriate compliance assistance tools is a natural complement to its role of ''being a voice'' for small businesses.

• *Experience in Cross-Agency Web Portals*—SBA is the creator and manager of Businesslaw.gov, a legal and regulatory information gateway to all 50 states and the platform for BCOS.

• *Focal Point*—SBA is willing and able to forge the necessary partnerships to manage this effort, and offers the Executive and Legislative branches a focal point for cost effective stewardship and accountability for e-government expenditures.

Current Partners

We presently have partnerships with nine Federal agencies, (*i.e.*, DOT, DOI, DOE, EPA,

IRS, DOL, OSHA, INS, and GSA) and seven states (*i.e.*, Illinois, Georgia, Washington, Missouri, Iowa, New Jersey and Texas). We have also enlisted the partnership of several associations to represent the business customer and provide us a true reality check, *e.g.*, NGA, NFIB, NASCIO, ATA, etc. BCOS delivers these capabilities through an Internet portal (*BusinessLaw.gov*) providing content specific to particular industries as well as help for business in general.

BCOS Focus

During its first year the BCOS effort focused on compliance assistance in the areas of environment, workplace health and safety, taxes and employment. For its second and third years, while continuing to make it easy to find, understand, and comply with governmental regulations, with the primary focus on creating compliance assistance tools, the BCOS initiative will place a greater emphasis on reducing the paperwork reduction, *i.e.*, the regulatory burden that emanates from having to comply with government requests for information. OMB estimates that the total federal paperwork burden is 7.7 billion hours annually of which 6.6 billion hours stem from the Department of Treasury. Evaluations of modern forms management systems which include interactive, electronic forms as well as streamlining collection processes and harmonizing data requirements across agencies have the potential to reduce by 50 percent agency costs and the small business burden.

This paperwork reduction emphasis emanates from the Small Business Paperwork Relief Task Force recommendations to reduce the burden using the following three strategies:

4. Reduce the information required through analyzing if information is needed, if definitions in different forms and forms in different agencies can be harmonized to reduce overlap;

5. Increase the effectiveness of data collection processes by collecting once and sharing data among programs and agencies;

6. Reduce the work of submitting data by using interactive, electronic, forms that aid the user.

To get faster results, the BCOS initiative will concentrate on highly regulated industries such as trucking, health care, food, and chemicals. To achieve this, the BCOS will look to a Governance Board made up of senior staff from the key regulatory agencies that can be a decision-making body. Through the guidance from the BCOS project management, the Board will ratify key development teams led by individual regulatory agencies. For instance, DOT will take the lead on reviewing the over 40 Information Collection Reports (ICRs) from 11 federal agencies and the 4 state transactions to determine where E-forms should be applied and including streamlining and harmonizing the data capture processes. Financing for these efforts will be made available by OMB or the regulatory agencies. SBA as the general manager of the BCOS will function as a secretariat for the Governance Board or Steering committee, work with associations and small businesses to analyze the regulatory information burden, hold focus sessions, create the project plans and develop proposals for harmonizing and streamlining information requirements across government as well as providing interactive, electronic forms and suggesting how collection processes can be streamlined. We will also take the lead in building the portal and functioning prototypes or proof of concepts for the burden reduction applications.

BCOS Results

One of the most important outcomes of BCOS is the demonstration that Federal and state agencies can work together to reduce the regulatory burden through a variety of means. It has shown that compliance assistance is possible and effective. The following describes some of the results achieved:

BusinessLaw Portal

BCOS uses BusinessLaw.gov as its foundation and framework. This portal provides nearly 20,000 links to federal and state legal and regulatory information on 39 different topics, where to go to complete transactions such as licenses and permits, and a host of information on rulemaking, compliance assistance, and regulatory fairness. The portal also offers useful information on where to get help, how to contact Congress and associations, and principal considerations in choosing legal help. In concert with the goals of the BCOS team, the site is adding new navigation aids, additional digital guides or expert tools, and user-friendly transactions. Estimated savings: $56 million annually.

Compliance Assistance Guides

- Alien Employee Visa Classification eTool
- Employment Eligibility Verification tool
- OSHA emergency building evacuation procedures e-Tool
- Coal Mining Report Harmonization
- Integrated State Registration and Federal EIN Web Services Application
- Choosing a Legal Structure
- Auto Dismantler & Recycler Environmental Audit Advisor
- Motor Vehicle (Class V) Waste Disposal Wells Advisor

Estimated savings from a total of 30 expert tools: $300 million annually to businesses and $12 million to agencies.

Coal Mining Report Harmonization

This project is an excellent example of agencies working together to reduce the information burden on nearly 1,000 coal miners who submit reports to DOI, DOE, EPA, DOL, IRS, and State EPAs. Eighty percent of the data in these reports are identical and require about 50,000 hours annually. A tool developed by DOI provides a one-stop submission of data that is then distributed to participating agencies. Data metrics using different definitions is automatically changed to the metric required by each agency and results in an estimated 25,000 hours saved. As the project has been progressing, agencies have begun to look at streamlining definitions, reporting periods and the need for the information in the first place. Estimated savings: $1 million annually.

Integrated State Registration and Federal Employer Identification Number Application

This example demonstrates that significant savings can ensue when state and Federal processes are integrated and offered as a single web services. State business registration requires many of the same data elements as the Federal Employer Identification Number (FEIN) submission. This tool permits the user to apply on-line for a state registration and then elect to apply for a FEIN, which is pre-populated with data from the state application. For additional information, the application asks for additional data in an interview format. IRS estimates that more than 2.4 million businesses acquire EINs annually. Estimated savings: $96 million annually.

Bureau of Citizenship and Immigration Services I–9 Interactive, Electronic Tool

All U.S. employers are responsible for completion and retention of Form I–9s for each individual they hire to certify work eligibility in the United States. This includes citizens and non-citizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I–9. The U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS), maintains the form. This tool developed by BCOS in cooperation with BCIS, guides the employer using an Intuit-type approach through a set of questions at the end of which the form is completed. Throughout the tool, educational material is provided in terms of instructions and answers to frequently asked questions. Estimated savings: $12 million annually with a substantial increase in the quality of the completed form.

Trucking One-Stop Portal

Trucking is an important industry, contributing to 1 out of every 12 jobs and local economies. A large part of the 900,000 plus trucking firms works interstate and needs to comply with information from the Federal and state governments. The Integrated Truck One-Stop is an example of how using harmonized data capture, electronic forms and transactions and offering web services for both federal and state requirements can work for a specific industry. The planning phase is being completed for this project.

We have developed the data reference model for both federal and state regulatory requirements. With this understanding, we can develop web services that let truckers submit data to a common front end portal that then processes the requests, distributes the data to the participating user states and Federal agencies, and returns credentials, licenses, permits and payment schedules. Additionally the trucking one-stop portal will provide compliance assistance information and tools to reduce the regulatory burden. The development of a trucking one-stop portal with E-forms and streamlining and harmonization of data collection will yield an estimated savings of $400 million annually.

The Profiler—Personalization for Finding Compliance Assistance Resources

This tool allows the user to characterize his firm in terms of where it is located, size, industry as well as what kind of assistance the user is looking for. The tool then locates available compliance assistance resources available from five major Federal agencies. The estimated savings are $62 million annually.

Appendix 7—Compliance Assistance Best Practices

Best practices and lessons learned are shown for three areas:[1] cross-jurisdictional State-wide services, other cross-jurisdictional portal applications and specific compliance and permitting services. In addition, other sites representative of specific navigational practices and assistance tools are included in the discussion of challenges.

Cross-Jurisdictional State Portals

The following sources are examples of State-wide services providing compliance assistance across multiple jurisdictions:

1. The Georgia Technology Authority (GTA) is designing an enterprise portal to integrate information from disparate sources throughout the Georgia State Government. The first to benefit from this portal are the projected 400,000 Georgians a year likely to renew their driver's licenses online. It is one of the first Web services portals based on Simple Object Access Protocol (SOAP) and Extensible Markup Language (XML) to take advantage of cross-jurisdictional transactions.

2. Washington State has implemented a State portal that serves as a one-stop registry for companies to do business in the State by providing relevant information and supporting transactions online. It was developed with a comprehensive understanding of customers and their needs and deployed using a component-based architecture to support its growth and sustainability. It is one of the first and largest Government-to-Business (G2B) transaction sites available in the nation.

3. The Commonwealth of Pennsylvania has implemented a one-stop business services portal that allows businesses to electronically identify, complete and submit all business-specific registration data required to multiple State regulatory agencies. Three State agencies currently participate in the initial phase: the Department of Revenue, the Department of State, and the Department of Labor and Industry. Each agency performs critical approval and oversight functions in registering new enterprises. Fifteen hundred (1,500) businesses have submitted or changed their registrations online without incurring legal and accounting expenses previously required.

4. The State of Virginia Department of Taxation offers the ability for a business to file its sales and withholding tax online. It provides for electronic filing and payments by both individuals and businesses, and is jointly supported by the Virginia Employment Commission and the Virginia Department of Taxation. Future plans call for seamless transactions across State agencies and integration for Federal Internal Revenue Service (IRS) and Social Security Administration (SSA) transactions.

5. The State of Mississippi has embarked upon a three-year initiative to develop a comprehensive State portal to provide e-Government services to its constituencies by building upon a flexible, open, and scalable technology foundation. Occupational license renewals for the Board of Architecture and payment processing were the first applications deployed with the initial release of the new portal in October 2001. Their success is based on a strategy of building a standards-based component architecture at the State level that can provide plug-and-play compatibility and interoperability for future applications.

Other Cross-Jurisdictional Portals

The following sources are examples of other services providing compliance assistance across multiple jurisdictions:

1. Inland Revenue, United Kingdom, Online Tax Filing deployed a tax filing system for employers and agents filing pay-as-you-earn taxes on behalf of employees; and a self assessment filing system for individual taxpayers. This site is an example of the rapid integration of commercial-off-the-shelf (COTS) forms processing, transaction engines and business rules to support businesses filing tax information online.

2. Miami-Dade County, Florida has one of the largest local e-Government transaction-based systems, allowing businesses and individuals to request services, track and review status of service and make payments online. It supports a host of county services from occupational licensing to the payment of parking tickets. They created a component-based architecture that promotes interoperability and enables the easy addition of Web-based transactions and tools.

3. Nova Scotia Atlantic Canada Online electronic business system (in partnership with an industry provider and the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland) provides third-party client organizations with secure Internet access to Government information. Electronic access is provided to personal property registries and records, vehicle information, business registries, court filings and documents and more. The business model relies on an industry provider to invest $10M in the development, implementation and management of the business and technical infrastructure that supports the online services. Organizations such as banks and law firms establish online accounts, from which small fees are automatically deducted for each transaction.

Specific Compliance and Permitting Applications

The following sources are examples of services providing specific compliance and permitting transactions for specific jurisdictions:

1. The Illinois Department of Revenue focused on reducing the tax and wage-reporting burden on businesses by providing an integrated capability for electronic registration, simplified tax and wage reporting, and online filing and payments. The department achieved success by developing a solid understanding of its customers' requirements and building the necessary infrastructure to provide secure digital transactions to more than 100,000 businesses. It defined a business model consistent with its mission and relied on a component-based architecture to deliver the needed business services.

2. The Ohio Bureau of Workers Compensation allows injured workers to fill out insurance claims forms electronically. As many as 80 percent of Ohio workers using the new system have been able to file claims within seven days of receiving their job-related injury, as opposed to 25–27 days for paper-based claims. Nine hundred companies have paid their workers compensation premiums online using credit cards. This site demonstrates the ability of individuals and businesses to file forms electronically, make payments online and have transactions synchronized across multiple State agencies within Ohio.

New Jersey's DEPonline is a one-stop environmental information sharing and regulatory compliance portal for business, industry and the public. DEPonline seamlessly interoperates with the New Jersey Environmental Management System (NJEMS), an integrated enterprise regulatory management solution. The portal enables business users to access status of compliance information and up-to-date regulations, apply and pay for (by credit card or check) a variety of permits and licenses and submit compliance reports online.

General Findings

Most cross-jurisdictional portals, particularly those at the State level, are currently in development and are facing similar issues, integrating solutions across multiple jurisdictions, developing common repeatable frameworks and addressing the diverse needs of a large customer base. While most have not achieved their stated goals, they do reveal some useful lessons learned:

Start with a comprehensive understanding of the customers, and address the services that have the largest potential gains in reducing the compliance burden and promoting efficiencies;

- Define an effective business model for delivery of services to customers, consistent with the mission and leveraging agency core competencies;
- Develop a component enterprise architecture that exploits common, repeatable standards and supports continued growth, promotes interagency collaboration and addresses user privacy and security concerns;
- Deploy proven technologies and tools, particularly those currently in use by the more successful implementations from compliance organizations; and
- Achieve interagency and intergovernmental cooperation and collaboration, an essential element in

[1] From a paper titled ''One-Stop Business Compliance Proposed Best Practices'' prepared for the Federal CIO council and the Business Compliance Assistance One Stop initiative in 2002 by a consortium of consulting firms. The whole paper can be found at *http://www.cio.gov/index.cfm?function=documents&section=best%20practices.*

providing a common, seamless One-Stop Business Compliance capability.

[FR Doc. 03–11311 Filed 5–8–03; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 1 and 11

Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 11

[Docket No. 02N–0277]

RIN 0910–AC39

Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations that would require the establishment and maintenance of records by certain domestic persons who manufacture, process, pack, transport, distribute, receive, hold, or import food intended for human and animal consumption in the United States. In addition, these requirements apply to certain foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. The proposed regulations implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and are necessary to properly address credible threats of serious adverse health consequences or death to humans and animals. FDA expects that the requirements the agency is proposing in these regulations, if finalized as proposed, would result in a significant improvement in FDA's ability to respond to and help contain threats of serious adverse health consequences or death to humans or animals from accidental or deliberate contamination of food.

DATES: Submit written or electronic comments by July 8, 2003. Written comments on the information collection provisions should be submitted by June 9, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, Maryland 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. 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: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1400.

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I. Background and Legal Authority

A. Public Health Security and Bioterrorism Preparedness and Response Act of 2002

The events of September 11, 2001, reinforced the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (''the Bioterrorism Act'') (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A—Protection of Food Supply, section 306 (21 U.S.C. 335a), which amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 414, Maintenance and Inspection of Records (21 U.S.C. 350(c)). Section 414(b) of the act provides, in part, that the Secretary of Health and Human Services (the Secretary), may by regulation establish requirements regarding the establishment and maintenance, for not longer than 2 years, of records by persons (excluding farms and restaurants) who manufacture, process, pack, transport, distribute, receive, hold, or import food. The records that must be kept by these regulations are those that are needed by the Secretary for inspection to allow the Secretary to identify the immediate previous sources and immediate subsequent recipients of food, including its packaging, in order to address credible threats of serious adverse health consequences or death to humans or animals. In section 306(d) of the Bioterrorism Act, Congress directed the Secretary to issue proposed and final regulations establishing recordkeeping requirements under section 414(b) of the act no later than 18 months after enactment of the Bioterrorism Act, that is, by December 12, 2003.

In addition, the Bioterrorism Act adds a new section 414(a) to the act that

provides records inspection authority to FDA. Section 414(a) of the act provides that when the Secretary has a reasonable belief that a food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, persons who manufacture, process, pack, distribute, receive, hold, or import food must provide access to records related to the food that are needed to assist the Secretary in determining whether the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. Section 306 of the Bioterrorism Act also amends section 704(a) of the act (21 U.S.C. 374(a)) to specifically authorize FDA inspections of all records and other information described in section 414 of the act, when the Secretary has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. Also, section 301 of the act (21 U.S.C. 331) is amended to make it a prohibited act to refuse to permit access to, or copying of, any record as required by section 414 or 704(a) of the act; or to fail to establish or maintain any record as required by section 414(b) of the act or to refuse to permit access to or verification or copying of any such required record; or for any person to use to his own advantage, or to reveal, other than to the Secretary or officers or employees of the Department of Health and Human Services, or to the courts when relevant in any judicial proceeding under this act, any information acquired under authority of section 414 of the act.

In addition to section 306 of the Bioterrorism Act, which amends the act as described above, FDA is relying on sections 701(a) of the act (21 U.S.C. 371(a)) in issuing this proposed rule. Section 701(a) of the act authorizes the agency to issue regulations for the efficient enforcement of the act.

B. Preliminary Stakeholder Comments

On July 17, 2002, FDA sent an open letter to the members of the public interested in food issues outlining the four provisions in Title III of the Bioterrorism Act that require FDA to issue regulations in an expedited time period, and FDA's plans for implementing them. In the letter, FDA invited stakeholders to submit comments to FDA by August 30, 2002, for FDA's consideration as it developed this proposed rule. FDA also held meetings with representatives of industry, consumer groups, other Federal agencies, and foreign embassies after sending out the July 17, 2002, letter, to solicit stakeholder comments. In response to these solicitations, FDA received a number of comments regarding section 306 of the Bioterrorism Act.

FDA has considered all the comments received by August 30, 2002. FDA will consider all comments we received so far with the comments we receive during the public comment period on this proposed rule in developing the final rule. Some of the significant comments FDA received on or before August 30, 2002, include:

- The regulations should be performance-based. There is no need to specify the form or manner in which the information must be kept by a person subject to the regulations;
- The regulations should provide flexibility for using existing recordkeeping systems;
- The regulations should give businesses the flexibility they need to store records in the manner they find most efficient;
- The regulations should divide food products into two categories, perishable and nonperishable, and establish separate recordkeeping requirements for each;
- The regulations should not have a 2-year time period for maintenance of records for fresh fruits and vegetables;
- The regulations should not require retailers to maintain records to identify which consumers bought specific food products;
- The regulations should make clear that the transporter of the food and its packaging between sources and recipients should not be considered the ''immediate previous source'' or the ''immediate subsequent recipient'' under the Bioterrorism Act;
- The regulations should make the actual physical location of the food the key to identifying the source and recipient, which may differ from ownership (i.e., corporate headquarters);
- The regulations should exclude as farms those engaged in shellfish growing and harvesting in the farm exemption;
- The regulations should define the exemption for restaurants as businesses that prepare food at the same location where such food is sold to individual consumers, and where such food may be eaten;
- The regulations should provide a phase-in period of at least 6 months to allow all businesses to make any needed adjustments to their current practices before implementation of new regulations;
- Although the regulations must take size of business into account, the regulations should not have a general exemption for small businesses;
- The regulations should allow for phasing-in of the requirements based on the size of regulated companies.

C. Highlights of the Proposed Rule

This proposal is just one of several rulemaking activities currently underway as part of the overall implementation of Title III of the Bioterrorism Act that enhance FDA's ability effectively and efficiently to respond to bioterrorist threats and other food-related emergencies in a way that promotes and protects the public health. Our intent in developing these proposed regulations is to provide the proper balance between ensuring that FDA has information it needs to complete a tracing investigation and ensuring adequate and reasonable flexibility for industry to comply with these requirements.

Section 414(b) of the act, as added by section 306(a) of the Bioterrorism Act, provides that the Secretary ''may'' by regulation establish recordkeeping requirements. Section 306(d) of the Bioterrorism Act, however, provides that the Secretary ''shall'' issue proposed and final regulations no later than 18 months from the date of enactment. FDA believes that Congress has directed the agency to exercise the authority in section 414(b). However, the agency recognizes that the use of the term ''may'' in one section of the statute and ''shall'' in another section creates an ambiguity. We request comments on our interpretation that we are required by section 306(d) of the Bioterrorism Act to exercise the authority in section 414(b) of the act.

In establishing and implementing this proposed rule, FDA will comply fully with its international trade obligations, including the applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement (NAFTA). For example, FDA believes this proposed rule is not more trade-restrictive than necessary to meet the objectives of the Bioterrorism Act. FDA has endeavored to make the establishment and maintenance of records process as simple as possible for both domestic and foreign facilities.

FDA is proposing to describe the specific information a covered entity must keep, but not specify the form or type of system in which those records must be maintained. Some of the key provisions we are proposing include: (1) Requirements to establish and maintain records to identify the immediate previous source of all food, (2) requirements to establish and maintain records to identify the immediate subsequent recipient of all food, (3) requirements to establish and maintain

records to trace the transportation of all food, (4) record retention requirements, (5) record availability requirements, and (6) compliance dates. Following is an overview of the proposed regulations, which is intended to highlight the content of certain sections and request comment on those sections specifically, including comment on whether certain requirements should be included in the final regulations.

Proposed requirements to establish and maintain records to identify the nontransporter and transporter immediate previous sources of all food (§ 1.337) would require specific persons (''you'') to establish and maintain records that identify the sources of all food you receive. The information that we propose as necessary to identify the nontransporter immediate previous sources includes: (1) The name, address, and phone number of the nontransporter immediate previous source; (2) the type of food received; (3) the date you received the food; (4) the lot number or other identifier of the food if available; (5) the quantity; and (6) the name, address, and phone number of the transporters who transported the food to you.

Proposed requirements to establish and maintain records to identify the nontransporter and transporter immediate subsequent recipients of all food (§ 1.345) would require that you keep records that identify the nontransporter recipients of all food you release. The information that we propose as necessary to identify the nontransporter immediate subsequent recipients is similar to that required to identify the nontransporter immediate previous sources.

Proposed requirements to establish and maintain records to trace the transportation of all food (§§ 1.351 and 1.352) would require that you keep records that trace the transportation process of all food you transport. The information that we propose as necessary to trace the transportation process includes: (1) The name, address, and phone number of the person who had the food immediately before you (the transporter's immediate previous source), and the date you received it from that person; (2) the name, address, and phone number of the person who had the food immediately after you (the transporter's immediate subsequent recipient), and the date you delivered it to that person; (3) the type of food transported; (4) the lot number or other identifier of the food if available; (5) the quantity; and (6) identification of each and every mode of transportation used (e.g., company truck, private carrier, rail, air, etc.) from the time you first received the food until the time you delivered it.

Proposed record retention requirements (§ 1.360) would require records for perishable foods not intended to be processed into nonperishable foods to be retained for 1 year after the date the records were created. FDA seeks comment on whether a person subject to these proposed regulations always or usually knows at the time perishable food is released whether or not it is intended to be processed into nonperishable food. For all other food, you would be required to retain the records for 2 years after the date the records were created. You would be required to retain all records at the establishment where the covered activities described in the records occurred (onsite) or at a reasonably accessible location. The maintenance of electronic records would be acceptable. FDA is proposing to exempt electronic records established or maintained to satisfy the requirements of this subpart from the requirement to comply with part 11—Electronic Records; Electronic Signatures (21 CFR part 11) and proposing to amend part 11 to reflect this exemption.

Proposed records availability requirements (§ 1.361) would require that records be made available within 4 hours of an FDA request if the request is made between 8 a.m. and 6 p.m., local standard time, Monday through Friday, or within 8 hours of a request if made at any other time.

In § 1.368, the agency is proposing that firms be in full compliance with these regulations within 6 months of publishing the final regulations. However, these proposed requirements would not be effective for small businesses (those employing fewer than 500 but more than 10 full-time equivalent employees) until 12 months after publishing the final regulations. Very small businesses that employ 10 or fewer full-time equivalent employees would have 18 months to comply.

The Bioterrorism Act directs the Secretary to take appropriate measures to ensure that there are effective procedures to prevent the unauthorized disclosure of any trade secret or confidential information that is obtained by the Secretary under the new regulations. FDA is planning to reemphasize in instructions to FDA personnel the importance of current protections and legal requirements against the unauthorized disclosure of any trade secret or confidential information that is obtained.

Section 306 of the Bioterrorism Act expressly states that FDA has authority to require recordkeeping as to ''food, including its packaging.'' FDA interprets this section as authority to require persons who manufacture, process, pack, transport, distribute, receive, hold, or import food to establish and maintain records to allow for the identification of the immediate previous sources and immediate subsequent recipients of food packaging as well. FDA interprets packaging in section 306 of the Bioterrorism Act to mean the outer packaging of food that bears the label. FDA is not interpreting packaging to include food contact substances, which are included in the definition of ''food.'' Outer packaging would include, for example, the outer cardboard cereal box that bears the label of the cereal, but would not include the inner lining that holds the cereal. Outer packaging would also not include the outer shipping box in which the cereal boxes are shipped.

FDA has tentatively concluded that the risk to human and animal health from contamination of outer food packaging is relatively small compared to the risk from contamination of the immediate packaging that comes in direct contact with food. Therefore, FDA is proposing not to require covered persons to keep records regarding outer food packaging. However, the agency also recognizes that there may be instances where it may be necessary for FDA to be able to investigate agents that could lace outer packaging and could thereby contaminate a food for which the immediate food contact packaging may not provide an adequate barrier. In addition, outer packaging could be intentionally diverted and used to package food that has been tampered with. FDA seeks comment on whether the level of risk to human and animal health from potential contamination of outer packaging is high enough to warrant inclusion of outer packaging in the final regulations.

In addition to the above, we seek comment on all other provisions in the proposed regulations, such as the proposed definitions and exclusions. We also invite comment on whether the final rule should include additional provisions, such as a model form that can be used to record all the required information.

II. Description of the Proposed Regulations

A. General Provisions

1. Who is subject to this subpart? (Proposed § 1.326)

Proposed § 1.326(a) describes the scope of the rule. As required by the Bioterrorism Act, proposed § 1.326(a) would require domestic persons who

manufacture, process, pack, transport, distribute, receive, hold or import food intended for human or animal consumption in the United States to comply with the regulations in this subpart, unless you qualify for one of the exclusions proposed in § 1.327. In addition, foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States are subject to these regulations, unless you qualify for one of the exclusions proposed in § 1.327.

However, even if you qualify for one of the exclusions proposed in § 1.327, if you conduct more than one type of activity at a location, and some of that activity is not exempt, you would be required to keep records with respect to the statutorily covered activities. For example, in addition to selling food to consumers, a retail facility may have an onsite restaurant or counter that prepares food it sells to consumers. The restaurant activity is exempt from all of the regulations in this subpart; however, the retail activities are covered by § 1.336. Similarly, a retail facility may sell both food and nonfood products, and may even sell primarily nonfood products. Regardless of what proportion of the retail facility sells nonfood products, these proposed regulations would require the retail facility to keep records of the immediate previous source for all food it receives that is not exempted by an exclusion. The regulations do not apply to the nonfood products the retail facility receives.

Proposed § 1.326(b) would require compliance by persons who engage either in interstate or in intrastate activities involving food. The Bioterrorism Act does not limit the establishment and maintenance of records requirement only to persons directly engaged in interstate commerce. To the contrary, the Bioterrorism Act provides FDA with the authority to require the establishment and maintenance of records by all ''persons'' who engage in specified activities involving food. Therefore, FDA tentatively concludes that the statute allows FDA to require domestic persons to keep records, whether or not they engage in interstate commerce. Because a bioterrorist threat involving food or other food-related emergency would have the same effect on the public health regardless of whether the food had originated from an out of state source, FDA is proposing in § 1.326(b) that all persons who manufacture, process, pack, transport, distribute, receive, hold, or import food be subject to these regulations, whether or not they directly engage in interstate activities involving food. Nonetheless, because FDA recognizes that this is an important and controversial issue, the agency is seeking comment on whether its tentative conclusion that it has authority to require recordkeeping by persons engaged in only intrastate commerce is correct. FDA also seeks comment on how many intrastate persons are not covered by one of the exemptions from the recordkeeping requirement (e.g., the farm or retail exemption) and we invite recommendations on what screening questions the agency could ask to enable a person to easily determine whether the person is engaged in interstate or intrastate commerce.

Proposed § 1.326(a) would also require compliance by foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States unless the facilities qualify for an exclusion under proposed § 1.327(f). FDA is proposing that the foreign facilities that are required to register under section 305 of the Bioterrorism Act also be required to establish and maintain records under section 306 of the Bioterrorism Act. (The foreign facilities that would be excluded from both the proposed registration and recordkeeping requirements are described in the discussion of proposed § 1.327(f).) FDA believes if these foreign firms were not required to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food, trace back of food products from outside the United States would be severely compromised. FDA believes that this approach provides the most efficient and effective strategy for obtaining needed information on food from foreign countries. FDA plans to take the appropriate steps and work closely with foreign governments to obtain access to the needed records if a threat of serious adverse health consequences or death to humans or animals from adulterated food necessitates inspection of records in foreign countries.

The provisions of this proposed rule apply to records of both human food and animal food. FDA believes that some recordkeeping requirements are necessary for food intended for food-producing animals, as well as for certain food for nonfood-producing animals (e.g., pet dogs and cats, horses, and zoo and circus animals). We define food for nonfood-producing animals as pet food. FDA believes, however, that the consequences of a potential terrorist attack or food-related emergency are greater for human food than for animal food. FDA also believes that the consequences of a potential terrorist attack or food-related emergency are greater for food for food-producing animals than for pet food. FDA addressed certain animal food risks in our regulation for animal proteins prohibited in ruminant feed (21 CFR 589.2000), also referred to as the bovine spongiform encephalopathy (BSE) rule.

Although FDA acknowledges that the risk to humans from an attack on the animal food supply is lower than the risk to humans from an attack on the human food supply, there is some risk to both humans and animals from an attack on the animal food supply. Contaminated animal food can be a link to human foodborne illness. (Ref. 32). People could be at risk through direct contact with animal food or through unintentional cross-contamination of cooking surfaces or utensils. Animals may also become infected and serve as a reservoir for exposing other animals and humans. For example, in 1996, an organochlorine pesticide was intentionally introduced into an ingredient used in animal food, including pet food. In 2002, dog chew treats were contaminated with Salmonella and became a vehicle to transmit Salmonella into homes. As a consequence, many pet owners became ill and one person died.

We propose that (1) All entities that manufacture, process, pack, transport, distribute, receive, hold, or import food for food-producing animals must keep records under this proposed rule; and that (2) those entities that manufacture, process, pack, transport, distribute, receive, hold, or import pet food that must keep records under the BSE rule also keep records under this rule. Because of the concern that some pet food is diverted for use for food-producing animals, the BSE rule recordkeeping requirements apply to pet food. We believe this proposal to require recordkeeping under the Bioterrorism Act by pet food entities covered by the BSE rule will provide important safeguards needed to limit the impact of contamination of pet food while minimizing additional costs to industry.

As discussed below, we are proposing to exempt pet food entities that are not subject to the recordkeeping requirements of the BSE rule from the recordkeeping requirements of this proposed rule. We propose that all entities involved in animal food, including the pet food entities exempt from the recordkeeping requirements, remain subject to the proposed records access and availability requirements.

FDA is interested in comments on whether or not the proposal provides adequate tools to trace animal food affected by a terrorist attack or other food related emergency and whether an

alternative approach should be used. Specifically, FDA is soliciting comments on the following questions: (1) Should we exempt all types of animal food entities from all or part of this proposed rule? (2) Should we exempt all pet food entities from all or part of this proposed rule? (3) Should we treat pet food the same as other types of animal food by requiring all pet food entities to meet the recordkeeping requirements under this regulation, not just those subject to the BSE rule? (4) Should we use criteria other than the scope of the BSE rule to determine which pet food entities should be exempt? If so, what should those criteria be?

2. Who is excluded from all or part of the regulations in this subpart? (Proposed § 1.327)

Proposed § 1.327(a) codifies the exemption for farms. This exemption is consistent with and required by the express language of the Bioterrorism Act.

Proposed § 1.327(b) codifies the exemption for restaurants. This exemption is consistent with and required by the express language of the Bioterrorism Act.

Proposed § 1.327(c) would exclude certain fishing vessels from all of the regulations in this subpart, except §§ 1.361 and 1.363. These vessels include those that not only harvest and transport fish, but also engage in practices such as heading, eviscerating, or freezing intended solely to prepare fish for holding on board a harvest vessel. The Bioterrorism Act is silent with respect to exempting fishing vessels in section 306, the ''Maintenance and Inspection of Records for Foods'' provision, although the ''Registration of Food Facilities'' provision, section 305, expressly exempts fishing vessels, except such vessels engaged in processing as defined in § 123.3(k) (21 CFR 123.3(k)).

FDA has tentatively concluded that the records of fishing vessels as defined in § 123.3(k), like those of farms, are not a necessary component of an effective traceback investigation. Nevertheless, because the records of ''fishing vessels otherwise engaged in processing fish, which for purposes of this subsection means handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding'' are necessary to an effective traceback investigation, these would still be subject to all of the regulations in this subpart.

Proposed § 1.327(d)(1) would exclude retail facilities from the regulations in § 1.345 of this subpart. This limited exclusion is only from the requirement to establish and maintain records of the immediate subsequent recipients of food when the food is sold directly to consumers. The Bioterrorism Act expressly states that the Secretary may require the establishment and maintenance of records by persons who ''distribute'' food, and therefore retail facilities could be subject to all other regulations in this subpart if FDA required it. FDA has tentatively concluded that to require retail facilities to keep records of each individual recipient consumer would be too burdensome and not necessary in order to address credible threats of serious adverse health consequences or death to humans or animals.

Proposed § 1.327(d)(2) would exclude retail facilities, such as roadside stands, located in the same general physical location as farms, as defined in proposed § 1.328, that sell unprocessed food grown or raised on those farms directly to consumers. This exclusion only applies to those retail facilities that employ 10 or fewer full-time equivalent employees, which is consistent with the way FDA is proposing to define very small businesses in proposed § 1.368(a)(2). This exclusion applies only to unprocessed food, including fresh fruits and vegetables and other raw agricultural commodities for use as food, such as honeycomb. The exclusion also applies to fish raised on farms. Unprocessed food grown or raised on locations other than farms, or on farms not located in the same general physical location, are not excluded.

This exclusion does not apply to processed food, even if it is sold directly to consumers from a retail facility in the same general location as a farm, unless all of the ingredients in that processed food were grown or raised on that farm. Processed foods include, for example, baked goods, jams, jellies, and maple syrup. Retail facilities would be required to establish and maintain records of the immediate previous sources under proposed § 1.337 for processed food sold directly to consumers if any of the ingredients of that processed food were not grown on that farm.

FDA believes that the burden placed on these retail facilities to establish and maintain records for unprocessed food grown or raised on a nearby farm and sold directly to consumers would likely outweigh the risk to the public health that follows from this proposed exclusion. FDA has tentatively concluded that such records are not needed in order to address credible threats of serious adverse health consequences or death to humans or animals. FDA believes it is necessary to narrow this exemption only to those retail facilities that remain close to the source farm in order to not compromise FDA's ability to trace adulterated food that has been transported over a distance greater than the same general physical location. The agency solicits comments on this proposed exemption.

FDA also is proposing in § 1.327(e) to exempt from all of the regulations in this subpart persons who manufacture, process, pack, transport, distribute, receive, hold, or import food that is regulated exclusively by the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). This section complies with section 306(d)(2) of the Bioterrorism Act, which states that section 306 should not be construed to authorize FDA to promulgate regulations for records governing foods within the exclusive jurisdiction of USDA. It also complies with section 315 of the Bioterrorism Act, which states that nothing in Title III of the Bioterrorism Act, or an amendment made by Title III, shall be construed to alter the jurisdiction between USDA and the U.S. Department of Health and Human Services under applicable statutes and regulations.

This exemption is for food within the exclusive jurisdiction of the USDA. Persons who manufacture, process, pack, transport, distribute, receive, hold, or import food that is jointly regulated by FDA and USDA would be required to keep records with regard to the food regulated by FDA. An example of food that is jointly regulated by FDA and USDA is frozen T.V. dinners containing both meat and fish.

Proposed § 1.327(f) would exclude foreign facilities that are also excluded from the requirement to register under section 305 of the Bioterrorism Act. As discussed previously in this document, FDA believes that requiring foreign facilities that must register to also establish and maintain records would be the most efficient and effective way to obtain information on food from foreign countries. Therefore, foreign facilities would not be required to establish and maintain records ''if food from these facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States.'' In other words, foreign facilities involved in the initial stages of manufacturing/

processing food are not required to establish and maintain records if another facility further manufactures/processes or packs the food produced at that facility outside the United States.

This exclusion would not apply to facilities if the ''further manufacturing/processing'' at the subsequent facility is of a de minimis nature, such as adding labeling to a package or adding plastic rings to the outside of beverage bottles to hold them together. In that case, both the facility conducting the de minimis activity and the facility immediately prior to it would be required to register and, therefore, would also be subject to these regulations. FDA seeks comment on the requirement for facilities conducting de minimis activities to keep records. The following are examples of which foreign facilities would be subject to, or excluded from, these regulations based on the activities they perform. As stated previously, the foreign facilities that are subject to these regulations are the same facilities that would be required to register under section 305 of the Bioterrorism Act.

• A foreign facility would be subject to these regulations if it prepares a finished food and places it into packages suitable for sale and distribution in the United States.

• A foreign facility distributing food to food processors outside the United States for further manufacturing/processing before the food is exported for consumption in the United States would not be subject to these regulations, unless the further manufacturing/processing entails adding labeling or other de minimis activity. If the further manufacturing/processing is of a de minimis nature, both the facility conducting the de minimis activity and the facility immediately prior to it would be subject to these regulations.

• The last foreign facility that manufactures/processes an article of food before it is exported to the United States would be subject to these regulations, even if the food subsequently is held or stored at a different facility outside of the United States.

• Facilities located outside the United States that take possession, custody, or control of finished foods for holding, packing, and/or storage prior to export to the United States are subject to these regulations.

Proposed § 1.327(g) provides that persons who manufacture, process, pack, transport, distribute, receive, hold, or import pet food who are not subject to the recordkeeping provisions of the animal proteins prohibited in ruminant feed regulation (21 CFR 589.2000) would be excluded from the recordkeeping requirements of this proposed rule. However, these entities, like all entities involved in animal food, remain subject to the proposed records access and availability requirements in proposed § 1.361 and § 1.363.

3. What definitions apply to this subpart? (Proposed § 1.328)

Proposed § 1.328 states that the definitions of terms in section 201 of the act (21 U.S.C. 321) apply to such terms when used in this subpart. Section 201 of the act defines various terms that appear throughout the act, including ''food'' (see section 201(f) of the act). The definitions of such terms apply when we use those terms in these regulations. In addition, proposed § 1.328 defines specific additional terms used in the proposed rule.

Proposed § 1.328 defines ''act'' as the Federal Food, Drug, and Cosmetic Act.

FDA is proposing in § 1.328 to define ''domestic person'' consistent with the definition of ''State'' in section 201(a)(1) of the act. That is, FDA is proposing to define a domestic person as one that is located in any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

FDA is proposing in § 1.328 to define a ''foreign facility'' as a facility other than a domestic person that manufactures, processes, packs, or holds food for consumption in the United States.

Proposed § 1.328 defines ''farm'' as a facility in one general physical location devoted to the growing of crops for food, the raising of animals for food (including seafood), or both. A farm may consist of contiguous parcels of land, ponds located on contiguous parcels of land, or, in the case of netted or penned areas located in large bodies of water, contiguous nets or pens. The term ''farm'' includes: (a) Facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; and (b) facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership. ''Farm'' includes such facilities because they are activities incidental to farming that most farms engage in (e.g., holding and packing of harvested crops). Facilities that engage in manufacturing/processing, packing, or holding of food that is not described in the definition of ''farm'' are subject to these regulations because such activities are not activities that most farms engage in and are thus not included in the definition of ''farm.'' Some examples of farms include: Apple orchards, hog farms, dairy farms, feedlots, and aquaculture facilities.

Persons that engage in more than one type of activity may meet the definition of farm as to some of those activities while not meeting the definition of farm as to other activities. Persons that grow crops and raise animals and also manufacture/process food that is sold for consumption off the premises are not farms for purposes of this subpart and are not exempt. For example, a person who grows oranges and manufactures/processes them into orange juice for sale to a distributor would need to keep records under this subpart of both the immediate previous sources and the immediate subsequent recipients of the orange juice. However, establishing and maintaining records of the immediate previous sources would only be required when persons manufacture/process food from ingredients obtained from other sources than that farm.

Similarly, persons who manufacture/process food from ingredients obtained from other sources only meet the definition of farm if all the food used in such activities is consumed on that farm or another farm under the same ownership. If a person combines oranges grown on his farm with oranges obtained from another source, processes them into orange juice on his premises, and consumes all of the orange juice on those premises, he would not need to keep records regarding those oranges. However, if the person sells that orange juice at a roadside stand directly to consumers, that roadside stand would not meet the definition of farm but would fall within the partial retail exclusion provided in proposed § 1.344. Retailers need only keep records identifying the immediate previous source.

Proposed § 1.328 defines ''food'' as having the meaning given in section 201(f) of the act, which is: ''(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.'' FDA also is proposing to include some examples of products that are considered food under section 201(f) of the act. Examples listed in the proposed rule include: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals (such as hogs and elk); bakery goods;

snack foods; candy; and canned foods. ''Substances that migrate into food from food packaging'' include immediate food packaging or components of immediate food packaging that are intended for food use. Outer food packaging is not considered a substance that migrates into food.

The provisions of this proposed rule apply to records of both nontransporters and transporters. Section 414(b) of the act provides that FDA may require recordkeeping with regard to records that are needed for inspection to allow the agency to identify the immediate previous sources and the immediate subsequent recipients of food. The proposed rule establishes two sets of immediate previous sources and immediate subsequent recipients, one for nontransporters and one for transporters. For nontransporters, the proposed rule defines immediate previous source as the nontransporter from which the company received the food. The immediate subsequent recipient for nontransporters is the nontransporter to which the company sent the food. The definition of nontransporter immediate previous source and immediate subsequent recipient describes them as persons who own food or who hold, process, pack, import, receive, or distribute food for purposes other than transportation. Nontransporters are also expected to keep records of the transporters that they receive food from and send food with. Nontransporters will thus be required to keep records on both transporters and nontransporters for both previous sources and subsequent recipients.

With respect to transporters (persons who have possession, custody, or control of food for the sole purpose of transporting it), the proposed rule provides for the company to establish and maintain records about its own transportation activities and the person from whom it received the food and the person to whom the food is delivered. The person from whom the food is received by the transporter is the immediate previous source. This could be a nontransporter as described previously or another transporter. The person to whom the food is delivered by the transporter is the immediate subsequent recipient. This person could be another transporter or a nontransporter. These records allow FDA to follow the chain of custody of the food through each transportation step, which may include a variety of forms of transportation (e.g., plane, train, and truck).

Because it is critically important for FDA to have the ability to trace back and trace forward quickly in the event of a terrorist event or other food-related emergency, FDA has defined for nontransporters the immediate previous source and immediate subsequent recipient as the previous nontransporter or next nontransporter. This will allow FDA in most cases to efficiently and effectively determine where the food was contaminated and to locate where the contaminated food was sent. However, the contamination could occur during the transportation process as well. The records of transporters will ensure that FDA has the potential in all cases to determine the source of contamination and trace the food back and forward through the transportation chain. FDA recognizes that requiring nontransporters to keep records on both previous and subsequent transporters and nontransporters is potentially burdensome. FDA is mandating this in order to facilitate the efficient investigation of food related emergencies (records on nontransporters) and to increase the likelihood of a successful traceback by ensuring all those who handle the food are examined (records on transporters).

We also recognize that there could be other interpretations of the statute. The statute could be read to provide that at every step of the movement of the food, the immediate previous source is the person who had the food before they delivered it to the next person. That next person would be the immediate subsequent recipient. Under that reading, if company A processes the food and sends it to company B via several modes of transportation, the chain of custody would be as follows: (1) Company A; (2) Red Truck Co.; (3) train; (4) Blue Truck Co.; and (5) company B. In this scenario, the immediate subsequent recipient for company A is Red Truck Co. The immediate previous source for Red Truck Co. is company A and the immediate subsequent recipient is the train. The immediate previous source for the train is Red Truck Co. and the immediate subsequent recipient is Blue Truck Co. The immediate previous source for Blue Truck Co. is the train and the immediate subsequent recipient is company B. If it is discovered at company B that the food is contaminated, since company B only has records to identify Blue Truck Co. as its immediate previous source, FDA would have to trace back from company B to Blue Truck Co. and from there to the train, then to Red Truck Co., until FDA finally arrives at company A, the source of the contamination. This type of tracing would not allow the agency to efficiently and effectively trace back from company B to company A or get to company A quickly to trace forward other food sent out by company A.

We are requesting comments on whether the approach with two sets of immediate previous sources and immediate subsequent recipients in this proposed rule is a reasonable interpretation of the statute. We also request comments on whether all transporters, including small independent transporters, have the capability to maintain records for the 1 and 2 year record retention periods. FDA also requests comment on the extent to which the recordkeeping burden on nontransporters (previous and subsequent transporters and nontransporters) creates new burdens for firms. We are also interested in suggestions for alternative recordkeeping arrangements that would allow for the complete and efficient investigation of food-related emergencies. In addition, we request comments on whether an approach different from the proposed rule that would require or create incentives for nontransporters to obtain and keep records on all the transporters that transport food between the nontransporters, by obtaining the records from the transporters, would be a reasonable interpretation of the statute.

Proposed § 1.328 defines ''manufacturing/processing'' as making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Some examples of manufacturing/processing include, but are not limited to, cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. FDA is defining ''manufacturing'' and ''processing'' together because the meanings of the terms overlap. For example, combining two materials into a finished product, such as macaroni and cheese, could be considered ''manufacturing,'' ''processing,'' or both. Since both manufacturers and processors are subject to these regulations, FDA does not believe it is necessary to distinguish between manufacturing and processing in the proposed rule.

Proposed § 1.328 defines ''nontransporter'' as a person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation.

Proposed § 1.328 defines the ''nontransporter immediate previous source'' as a nontransporter who last had an article of food before transferring it to another nontransporter. Nontransporter immediate previous source includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity. Government entities include school systems, public hospitals, prisons, commissaries, etc.

Proposed § 1.328 defines ''nontransporter immediate subsequent recipient'' as a nontransporter who acquires an article of food from another nontransporter. Nontransporter immediate subsequent recipient also includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity.

Proposed §§ 1.337(a)(1) and 1.345(a)(1) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate previous source and nontransporter immediate subsequent recipient, respectively, whether domestic or foreign. We propose these requirements to mean the address and information of the specific location of where the statutorily covered activity occurred, and not that of a corporate headquarters at another location than where the activities took place. For example, a food product may be processed at a manufacturing plant, shipped to a packing facility, and then transported to a retail store all owned by the same corporation. The proposed requirements would apply to each individual location that received or released the food, even if each facility is owned by the same corporation. This would mean that firms would need to establish and maintain records accessible at each specific plant, packing facility, and retail store. FDA's intention is that these requirements identify the physical location of the food at each step of the way as it travels through the chain of distribution, from the farm or sea to the consumer. FDA requests information on whether this requirement to keep records on intra-corporate transfers will impose new burdens upon firms or whether firms keep these records currently.

Proposed § 1.328 defines ''perishable food'' as food that is not heat-treated, not frozen, and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.

The ''perishable food'' definition has been modeled after the current Regulatory Procedures Manual definition of ''perishable commodity'' for purposes of this proposal. Examples include, but are not limited to, fluid milk (but not ultrapasteurized), live fish, lobster, crab, other crustaceans, shellfish, fresh fruits and vegetables. The agency is seeking comment on whether we have best defined ''perishable food'' for purposes of these regulations.

In addition, FDA is defining ''perishable foods'' for the purposes of establishing a shorter record retention time for those foods as opposed to nonperishable foods. FDA seeks comments on the proposed definition of perishable foods and whether the agency should use that definition as the basis for establishing record retention times.

Proposed § 1.328 defines ''pet food'' as food for nonfood-producing animals. Nonfood-producing animals include household pets, such as dogs and cats, and also include other nonfood-producing animals such as horses and circus and zoo animals.

Section 306 of the Bioterrorism Act does not extend to recipes. Proposed § 1.328 defines ''recipe'' as the quantitative formula used in the manufacturing of the food product, but not the identity of the individual ingredients of the food. If finalized as proposed, FDA would have access to the records containing the ingredients used in a food product, but would not have access to the quantities of the ingredients used to make a product. The act currently requires manufacturers to disclose to the public the ingredients they use on the labels of their food products. It is critical to a tracing investigation that the ingredients and the sources of the ingredients are identified.

Proposed § 1.328 defines ''restaurant'' as a facility that prepares and sells food directly to consumers for immediate consumption. As with farms, persons who engage in more than one type of activity may meet the definition of restaurant as to some of those activities while not meeting the definition of restaurant as to other activities. Those persons would be required to keep records as to those activities covered by this subsection that do not meet the definition of restaurant.

Some examples of restaurants as defined in the proposed regulations include: Cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens.

Due to possible ambiguity in the term ''catering facilities,'' FDA states in the proposed restaurant definition that facilities that provide food to interstate conveyances, such as airplanes, passenger trains, and cruise ships, rather than directly to consumers, are not restaurants. Facilities that provide food to interstate conveyances are not considered restaurants because they do not serve food directly to consumers for immediate consumption. For example, a facility that provides sandwiches to a passenger train for eventual sale to passengers would not be considered a restaurant. However, the snack bar on the train that sells the sandwiches to consumers would be considered a restaurant. FDA has historically inspected these facilities that provide food to interstate conveyances and considers them processors, rather than restaurants.

Because the proposed regulations also apply to persons who manufacture, process, pack, transport, distribute, receive, hold, or import food for animal consumption in the United States, by analogy, the term ''restaurant'' also includes pet shelters, kennels, and veterinary facilities in which food is provided to animals.

Proposed § 1.328 defines ''retail facility'' as a facility that sells food products directly to consumers only. The term includes, but is not limited to, grocery and convenience stores, vending machine locations, and commissaries. The limited exclusion from establishing and maintaining records of the immediate subsequent recipient applies only to food sold directly to consumers. A facility that sells food to wholesalers and/or other retailers, in addition to consumers, would have to keep records of the immediate subsequent recipients because wholesalers and retailers are not considered consumers for purposes of these proposed regulations.

Proposed § 1.328 defines ''transporter'' as a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food. A person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation is not a transporter.

Proposed § 1.328 defines ''transporter's immediate previous source'' as the person from whom a transporter receives food. This source can be either another transporter or a nontransporter. The transporter's immediate previous source includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity.

Proposed § 1.328 defines ''transporter's immediate subsequent recipient'' as the person to whom a transporter delivered food. This recipient can be either another transporter or a nontransporter. A transporter's immediate subsequent recipient includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity.

Proposed § 1.328 defines ''you'' as a person or facility subject to this subpart under § 1.326. FDA is proposing to use ''you'' throughout the proposed rule for easier readability.

4. Do other statutory provisions and regulations apply? (Proposed § 1.329)

Proposed § 1.329 would require that in addition to the regulations in this subpart, you must comply with all other applicable statutory provisions and regulations related to the establishment and maintenance of records for foods. Regulations in this subpart are in addition to existing recordkeeping regulations, such as the regulations for low acid canned foods, juice, infant formula, color additives, bottled water, animal feed, and medicated animal feed. (See 21 CFR 113.100(d); 21 CFR 120.12; 21 CFR 106.100(g); 21 CFR 80.39; 21 CFR 129.35; § 589.2000; and 21 CFR 225.102 & 225.110, respectively).

5. Can existing records satisfy the requirements of this subpart? (Proposed § 1.330)

Proposed § 1.330 states that the regulations in this subpart do not require duplication of existing records if those records contain all of the information required by this subpart. If a person subject to the regulations keeps records of all of the information as required by this subpart in compliance with other Federal, State, or local regulations, or for any other reason, e.g., as a result of its own business practices, then those records may be used to meet these requirements. Such records may include, but are not limited to, purchase orders, bills of lading, invoices and shipping documents. Some current FDA regulations require records, including those for low acid canned foods, juice, infant formula, color additives, bottled water, animal feed, and medicated animal feed. (See 21 CFR 113.100(d); 21 CFR 120.12; 21 CFR 106.100(g); 21 CFR 80.39; 21 CFR 129.35; 21 CFR 589.2000; and 21 CFR 225.102 & 225.110, respectively). However, none of the existing FDA regulations are sufficient alone to meet the requirements we are proposing in these regulations. A person who has been complying with these regulations only would have to add records addressing the new elements. The burden is on the person subject to these regulations to ensure it keeps all applicable records. Our intent is to have as little impact as possible on current recordkeeping practices if those records can meet the requirements of these proposed regulations. We are proposing the specific information a covered person must keep, but we will not specify the form or type of system in which those records must be maintained.

B. Establishment and Maintenance of Records to Identify the Nontransporter and Transporter Immediate Previous Source of All Food

What information is required in the records established and maintained to identify the nontransporter and transporter immediate previous source? (Proposed § 1.337)

The Bioterrorism Act authorizes FDA to require by regulation the establishment and maintenance of records ''needed'' by the Secretary for inspection to allow the Secretary to ''identify'' the immediate previous sources of food. Based on FDA's interpretation of this statutory authority and what is ''needed'' to ''identify'' the immediate previous source, proposed § 1.337(a) would require that you establish and maintain records for all food as follows:

- Proposed § 1.337(a)(1) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate previous source, whether domestic or foreign;
- Proposed § 1.337(a)(2) would require an adequate description of the type of food received, to include brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);
- Proposed § 1.337(a)(3) would require the date you received the food;
- Proposed § 1.337(a)(4) would require the lot or code number or other identifier of the food (to the extent this information exists);
- Proposed § 1.337(a)(5) would require the quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and
- Proposed § 1.337(a)(6) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the transporters who transported the food to you.

Proposed § 1.337(a) would require that you include information reasonably available to you to identify the specific source of each ingredient that was used to make every lot of finished product, so that incoming ingredients can be linked to the outgoing finished products. If FDA cannot immediately narrow the trace back to a specific source, tracing becomes much more difficult, there is an increased risk to consumers, and some food sources are unfairly implicated. FDA believes this is a necessary and beneficial requirement for consumers, and will help conserve FDA's limited resources, by focusing our investigation only on those entities who handled the at-risk food. FDA's investigation of the unaffected sources is time consuming and may have a negative business impact on the incorrectly implicated sources. These sources should not be penalized by exposure to unwarranted scrutiny and perhaps unwarranted adverse publicity because of inadequate recordkeeping by others in the distribution chain. In addition, in a recall situation, a business could limit the economic impact by being able to limit its recall to only a specific group of products instead of having to conduct a broader recall. What is reasonably available may vary from case to case.

FDA recognizes that the food industry often relies on multiple sources of ingredients to make food products, and that it is common practice to commingle ingredients from different sources prior to incorporating them into a finished product. For example, some food processors commonly store raw materials like corn syrup and flour in tanks and silos. In some instances, these tanks and silos are not dedicated by suppliers, but are topped off as supplies run low, resulting in routine commingling of raw ingredients from a number of suppliers. Moreover, it is FDA's understanding that flour or grain silo crowns do not uniformly dissipate, resulting in uneven distribution of ingredients. FDA acknowledges that changing this longstanding system to require dedicated supplier storage to facilitate source specific recordkeeping would involve significant financial costs.

It is not FDA's intent to require the reconfiguration of each manufacturing plant. These proposed regulations, however, would require you to capture the information that is reasonably available to you to connect finished products with the immediate previous source of each of the food products used to make that finished product. FDA understands that in some multiple sourcing contexts this information only may allow for a reduction in the number of potential sources for a specific food product, but may not necessarily

identify one specific source of the food product.

For example, a company that bakes cookies may source flour from five different companies rather than depend on a single company as its supplier. The flour from the five companies may be stored in one common silo prior to being used in the manufacture of the cookies. In this scenario, the manufacturer could identify, depending on the date the flour was received from each company and placed in the silo and when the silo was emptied, the various companies that were the sources of the flour. Under this situation, the information is not reasonably available to determine a single source of the flour used in a particular lot of cookies. In this case, the information reasonably available to you would be the identity of all of the potential sources of the flour for each finished lot of cookies.

Conversely, if the manufacturer did have dedicated silos for each supplier of flour, then the information would be reasonably available to the manufacturer to specify the specific source of the flour for each finished product.

Proposed § 1.337(a)(4) would require maintenance of the lot or code number or other identifier of the food (to the extent this information exists) to allow FDA the capability to limit its investigation to the implicated food. For instance, if a company repeatedly and consistently orders a particular food from a supplier, and the threat is associated with a single shipment or some shipments but not others, it is important to have the capability to isolate the shipment or shipments in question from others. This would be more cost effective and less burdensome to FDA. In addition, if the threat affects the transporter, identifying information such as lot numbers or other identifiers would facilitate the location and isolation of the conveyance that may have become contaminated by the implicated food. This cannot readily be done without information that specifically identifies the food.

Proposed § 1.337(a)(5) would require you to record the quantity of the food and how it is packaged to assist FDA in identifying the implicated food and also allow FDA to determine the scope of the threat. With this information contained in the records, FDA would be able to determine the quantity of the potentially adulterated food that is in the stream of commerce, i.e., whether it is one crate or 1,000 crates of tomatoes. In addition, as part of a tracing investigation, FDA would be able to identify at each location whether all of the potentially adulterated food has been accounted for or whether any part of a shipment had been diverted. Both the immediate previous source and immediate subsequent recipient would be required to keep records of the quantity of food received or released to allow FDA to determine that the quantity of food sent was the quantity received. This would ensure that FDA is best able to protect public health by being able to identify and locate adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

Proposed § 1.337(a)(6) would require you to keep in your records information to identify the transporter who transported the food to you. This requirement to identify the transporter is in addition to proposed § 1.337(a)(1), which requires you to keep in your records information that identifies the nontransporter immediate previous source.

C. Establishment and Maintenance of Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of All Food

What information is required in the records established and maintained to identify the nontransporter and transporter immediate subsequent recipient? (Proposed § 1.345)

The Bioterrorism Act authorizes FDA to require by regulation the establishment and maintenance of records ''needed'' by the Secretary for inspection to allow the Secretary to ''identify'' the immediate subsequent recipient of food. Based on FDA's interpretation of this statutory authority and what is ''needed'' to ''identify'' the immediate subsequent recipient, proposed § 1.345(a) would require that you establish and maintain records for all food you release that identifies information that is substantially similar to that discussed in the requirements to identify the nontransporter immediate previous source.

D. Requirements to Establish and Maintain Records to Trace the Transportation of All Food

1. Who is required to establish and maintain records for tracing the transportation of all food? (Proposed § 1.351)

The Bioterrorism Act expressly states persons who transport food are subject to these regulations. Proposed § 1.351 would require you, if you are a domestic person, to establish and maintain records for tracing those immediately before (transporter's immediate previous source) and immediately after you (transporter's immediate subsequent recipient) in the transportation process if you transport food.

2. What information is required in the transportation records? (Proposed § 1.352)

Proposed § 1.352(a) would require that you establish and maintain the following records for each food you transport:

- Proposed § 1.352(a)(1) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had possession, custody, or control of the food immediately before you, and the date you received it from that person;
- Proposed § 1.352(a)(2) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had possession, custody, or control of the food immediately after you, and the date you delivered it to that person;
- Proposed § 1.352(a)(3) would require an adequate description of the type of food, including brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);
- Proposed § 1.352(a)(4) would require the lot or code number or other identifier of the food (to the extent this information exists);
- Proposed § 1.352(a)(5) would require the quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and
- Proposed § 1.352(a)(6) would require the identification of each and every mode of transportation (e.g., company truck, private carrier, rail, air, etc.), and the individual responsible, from the time you first received the food until the time you delivered it.

The proposed requirements are intended to provide the necessary information to allow FDA to trace the transportation of all food. In proposed § 1.352(a)(1) and (a)(2), the required information would consist of whoever had the food before you and after you. This person could be either a nontransporter or another transporter. In a multiple transporter situation, you may be receiving the food from another transporter and/or delivering it to another transporter. The proposed requirements in § 1.352(a)(1) and (a)(2) are intended to capture this information regardless of whether you receive food from a nontransporter or another transporter, or deliver it to a nontransporter or another transporter. You would only be responsible for maintaining a record of the required information with respect to the person

from whom you received the food from and the person to whom you gave it. You would not be required to maintain records of transactions to which you were not a party.

Proposed § 1.352(a)(6) would require transportation companies that use several modes of transportation within their company to record when the food was put on which kind of vehicle and who was responsible for it during that leg of the trip. For example, Yellow Transportation Co. may use two different Yellow trucks and a Yellow plane. This section would require Yellow Transportation Co. to keep records of each and every mode of transportation and the individual responsible, from the time the food was first received until the time it was delivered. The ''individual responsible'' should be the person within the transportation company who is responsible for that vehicle and the food being transported. FDA seeks comments on whether ''individual responsible'' should be the operator of the conveyance or whether it can be someone within the corporation who has overall responsibility for the vehicle and the food being transported. FDA understands that it is common practice for one transportation company to use several different modes of transportation within that company throughout its possession and control over the food. The food is potentially subject to tampering at each phase of the transportation process. If the transportation company responsible for the food does not have complete records identifying the mode of transportation and who was responsible for the food throughout the entire time that company had possession and control over the food, the tracing chain is broken and it becomes more difficult and time consuming to determine if that shipment of food has been diverted or tampered with. FDA believes this detailed information regarding the food transportation would be necessary to expedite the tracing investigation in situations when FDA has a reasonable belief that food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals.

E. General Requirements

1. What are the record retention requirements? (Proposed § 1.360)

Proposed § 1.360(a) states the records required by these regulations are to be created at the time the statutorily covered activities take place. Proposed § 1.360(b) would require records for perishable foods not intended to be processed into nonperishable foods to be retained for 1 year after the date the records were created. Although perishable foods have a relatively short shelf life, FDA is proposing a 1 year record retention period for these foods. In some situations, the health hazard may not be immediately apparent but may emerge months after the food has been consumed. In other situations, the harm may have been caused by novel contaminants or novel vehicles for known contaminants, and it may take months to identify the sources of contamination. As an example, in 1995, there was an investigation of an outbreak of cyclosporiasis. At the time, FDA did not know that Cyclospora could contaminate raspberries. An investigation concluded that water was the likely vehicle. In 1996, there were numerous additional cyclosporiasis outbreaks in the United States and the link was made to raspberries from Guatemala. Fresh raspberries had been served at the site of the 1995 outbreak and then, a year later, FDA needed to determine their source. The distributor had no records to facilitate the traceback.

The proposed 1-year period would not apply to perishable foods that are intended for processing into nonperishable foods, e.g., jams and jellies made from fruits. In those instances, the longer record retention period of 2 years is needed to ensure the recordkeeping chain for finished food products made using perishable foods is available during tracing investigations. If you are uncertain whether a perishable food is destined or intended for processing into a nonperishable food, the 2-year record retention period applies. FDA seeks comment on the impact of this provision.

Proposed § 1.360(c) would require that you retain records for all foods (except animal foods as discussed below) not covered by proposed § 1.360(b) for 2 years after the date the records were created. This proposed requirement is consistent with the authority given in the Bioterrorism Act. Based on information provided to FDA by the food industry, the minimum time for processed food products to clear the food production and distribution/retail system is 3 years. In addition, the average distribution time between harvesting and final retail sale of frozen fruits and vegetables is approximately 3 to 24 months. These are average times, and individual products may be in commerce for a longer period. FDA believes that allowing anything less than a 2-year record retention period for nonperishable food, as well as perishable foods intended to be processed into nonperishable food, would severely compromise a tracing investigation.

Proposed § 1.360(d) would require that you retain records required by these regulations for animal food, including pet food, for 1 year after the date the records are created. Food for food-producing animals tends to have a faster turnover rate than many kinds of human food. In addition, since pet foods are typically the sole source of food for pets, such foods tend not to be stored as long as many human foods. Therefore we propose that records for all animal food, including pet food, be retained for only one year after the date the records are created. This is consistent with the BSE rule.

Proposed § 1.360(e) would require that you retain all records required by these regulations at the establishment where the covered activities described in the records occurred (onsite) or at a reasonably accessible location. We recognize that there may be more records than available storage space at the location where the covered activities occur. We are therefore proposing that records may be stored offsite, provided you can comply with the record availability requirements in proposed § 1.361.

Proposed § 1.360(f) provides that the maintenance of electronic records is acceptable. In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA issued regulations at part 11 that provide criteria for acceptance by FDA of electronic records under certain circumstances. To minimize the burden of this proposed rule, FDA proposes to exempt electronic records established or maintained to satisfy the requirements of this subpart from the requirement to comply with part 11. FDA believes that a requirement that records kept under this subpart comply with part 11 would hinder the ability of persons subject to these regulations to utilize existing systems and records to satisfy the requirements of these proposed regulations as contemplated in proposed § 1.330. If the agency decided to require all electronic records to satisfy part 11 before they could satisfy these proposed recordkeeping requirements, large numbers of already existing electronic records and recordkeeping systems would have to be recreated and redesigned. This provision would require that records kept for some other statutory or regulatory purpose, but which also may be used to meet the requirements of this subpart, must comply with part 11 as required.

2. What are the record availability requirements? (Proposed § 1.361)

Proposed § 1.361 states that when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, any records or other information accessible to FDA under section 414 or 704(a) of the act must be readily available for inspection and photocopying or other means of reproduction. Although the statutory requirements in section 414 and amended section 704(a) of the act regarding records access are self-executing and are currently in effect, FDA is issuing regulations to further refine some aspects of the food records access requirements. Because section 306 of the Bioterrorism Act includes two records inspection authorities, one of which, section 704(a), cross refers to records described in section 414, we request comment on the interconnection between the records access provisions in sections 414 and 704(a) of the act.

Proposed § 1.361 would require records to be made available within 4 hours of a request if the request is made between 8 a.m. and 6 p.m. (local standard time), Monday through Friday, or within 8 hours of a request if made at any other time, by an officer or employee duly designated by the Secretary who presents appropriate credentials and a written notice. In the event of a threat of serious adverse health consequences or death to humans or animals, FDA believes these time limits are necessary to effectively and efficiently perform a tracing investigation.

The most common problem encountered by the FDA in a tracing investigation has been a lack of ready access to records. Records are often stored offsite or are stored in a database where the records are difficult to retrieve. In FDA's experience, rarely do firms make records available within 24 hours. The usual timeline is 2 to 3 days. This delay severely reduces the speed at which FDA can perform a traceback. If every firm were to take 2 days to give FDA the needed records, even with a short traceback (e.g., 3 firms), it could take FDA up to 2 weeks to trace the product to its source, taking into account time for record review and travel to the firms. This time may be increased if the records are incomplete and FDA has to wait for missing records to be retrieved. This possible delay would be a substantial concern if FDA were attempting to remove adulterated food that presents a threat of serious adverse health consequences or death to humans or animals from commerce.

Proposed § 1.361 would also require that if you store the records required by these regulations offsite, you must be able to retrieve and provide the records onsite within the specified time period. Electronic records are considered to be onsite if they are accessible from an onsite location.

3. What records are excluded from this subpart? (Proposed § 1.362)

Proposed § 1.362 would exclude from the proposed regulations recipes for food as defined in proposed § 1.328, financial data, pricing data, personnel data, research data, or sales data (other than shipment data regarding sales). These exclusions are consistent with the express language in the Bioterrorism Act.

4. What are the consequences of failing to establish or maintain records or make them available to FDA? (Proposed § 1.363)

Consistent with the express language in the Bioterrorism Act, proposed § 1.363 states (a) the failure to establish or maintain records as required under section 414(b) of the act or to refuse to permit access to or verification or copying of any such required record is a prohibited act under section 301 of the act (21 U.S.C. 331) and (b) the failure to make records or other information available to FDA as required by section 414 or 704(a) of the act is a prohibited act under section 301 of the act (21 U.S.C. 331).

5. What are the compliance dates for this subpart? (Proposed 1.368)

Under sections 414 and 704(a) of the act, FDA may have access to and copy all records and other information related to an article of food if the Secretary has a reasonable belief that the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. The basic requirement that access to records and other information be given under these circumstances is currently in effect and does not require implementing regulations. FDA has chosen to further define access requirements in regulations, but can use its inspectional authority prior to the effective date of these regulations.

FDA carefully considered the size of a business when developing these proposed regulations. FDA found that most products and ingredients pass through at least one small business when moving through the distribution process (see Initial Regulatory Flexibility Analysis discussion in section III.B. of this document). If FDA were to exempt small businesses from these regulations or to permit shorter record retention times for them, the effectiveness of the regulations would be severely compromised due to the breaks in the recordkeeping chain during tracing investigations. Thus, FDA cannot propose totally exempting any business based on size from these requirements. However, FDA does propose to provide small and very small businesses additional time to come into compliance with these regulations.

Thus, proposed § 1.368(a) would require that firms that do not qualify as small businesses be in full compliance with these regulations within 6 months after the publishing date of the final rule. Proposed § 1.368(a)(1) would require that small businesses employing fewer than 500 but more than 10 full-time equivalent employees be in full compliance with these regulations within 12 months after the publishing date of the final rule. Proposed § 1.368(a)(2) would require that very small businesses, defined as those employing 10 or fewer full-time equivalent employees, be in full compliance with these regulations within 18 months after the publishing date of the final rule.

III. Analysis of Economic Impact

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

Need for the regulations: The purpose of these proposed regulations is to enable FDA to respond to, and help contain, adulterated food that presents a threat of serious adverse health consequences or death to humans or

animals. The benefits of these proposed regulations would be realized by accomplishing this purpose.

Reason for the regulations: FDA is proposing several regulations that will work in harmony to improve food safety. Food safety is mostly a private good. Establishments have powerful incentives to ensure that the ingredients they purchase are not contaminated and that their production processes are protected from unintentional and intentional contamination. Deliberate (intentional) contamination of food linked to a particular product or plant—particularly if the plant is considered negligent—would be extraordinarily costly to a firm. Indeed, the private incentives to avoid deliberate contamination should be similar to the private incentives for food safety. Deliberate food contamination events nonetheless differ from ordinary outbreaks of food-borne illness in that they are more likely to be low probability events with severe public health consequences.

Although private incentives lead to the private efforts to protect against deliberate contamination at the plant level, there are external effects associated with privately produced protection. The most important external effect of protection against deliberate contamination is information. Getting food from the farm or sea to the plate involves a complex system of production and distribution. The system works using local knowledge and information; each participant needs to know only as much about the overall system as is necessary for his or her business. Market prices convey most of the information necessary for the ordinary production and distribution of food. In the event of an actual or suspected contamination of the food supply, however, more complete information is needed where it can be centrally used. The suspect food must be traced backward and forward through the distribution chain, both to protect consumers and to find the source and cause of the event.

No individual firm or organization has sufficient financial incentive to establish a central information system relating to food safety for the entire economy. The nation's food producers and importers as a whole would benefit from such a system because it would be easier to uncover and solve problems, but the private costs to create the system would probably be prohibitive for any single firm or third party organization.

We estimate that an effective system of information would require several hundred thousand participants to gather information and provide it to a central system. The private transaction costs to bring all the participants together voluntarily and get them to agree to create such a system would be extraordinarily high. No single organization could capture additional revenue sufficient to cover the cost. Also, because the provision of information by some participants makes it available for all, there would be a tendency for establishments to try to be free riders in the information system. But the more information and participation in the system, the more effective it is.

Another way of looking at the problem of participation is in terms of marginal private benefits and marginal social benefits. By gathering and providing the information used in a food safety system, an individual establishment receives additional private benefits from enhancing the safety of its own food. In addition, participating in the system increases the effectiveness of the entire information system. In other words, the system works better the more establishments participate in it. The individual establishment does not capture this additional social benefit. The marginal private benefit (enhanced safety for individual establishments) is less than the marginal social benefit (the marginal private benefit plus the increased effectiveness of the entire information system). The difference between private and social benefit reduces the incentive for establishments to participate in a voluntary private system.

The events of September 11, 2001, led Congress to conclude that public creation and provision of an information system is necessary. The Bioterrorism Act and its implementing regulations would establish an information system that would allow FDA to have an integrated picture of the food distribution system. This particular regulation addresses one important aspect of this information system: The need to keep product and ingredient distribution records. However, as stated above, FDA is proposing several regulations to address these needs so the costs and benefits of any one regulation will be closely associated with related provisions in other proposed rules. With the regulations in place, the agency would have the additional tools necessary to help deter and respond to deliberate threats to the nation's food supply as well as to other food safety problems.

Baseline: FDA considers the baseline for this analysis the current state of the world, and we assume this baseline has zero costs and benefits. We also consider having no new recordkeeping requirements as option 1 in our analysis. Section 414(b) of the act, as added by section 306(a) of the Bioterrorism Act, provides that the Secretary ''may'' by regulation establish recordkeeping requirements. Section 306(d) of the Bioterrorism Act, however, provides that the Secretary ''shall'' issue proposed and final regulations no later than 18 months from the date of enactment. FDA believes that Congress has directed the agency to exercise the authority in section 414(b) of the act, so the current state of the world as considered in option 1 is not legally viable. The agency recognizes, however, that the use of the term ''may'' in one section of the statute and ''shall'' in another section creates an ambiguity. We request comments on our interpretation that we are required by section 306(d) of the Bioterrorism Act to exercise the authority in section 414(b) of the act. However, the Office of Management and Budget (OMB) cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity costs of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. Option 1 will serve as the baseline against which other options will be measured for assessing costs and benefits.

Options: The following section analyzes regulatory options that address the need for the recordkeeping regulation:

1. No recordkeeping requirements. Take no new regulatory action.

2. Require all persons that manufacture, process, pack, hold, receive, distribute, transport, or import food destined for consumption or use in the United States to establish and maintain records identifying the immediate previous source and the immediate subsequent recipient of the food, and its outer packaging. Also require all persons that manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging destined for use in the United States to establish and maintain records identifying the immediate previous source and the immediate subsequent recipient of that outer food packaging. The records requirements apply to both foreign and domestic persons. For domestic persons, this includes those who engage in the specified food-related activity whether or not those activities occur solely intrastate. Persons engaging in more than one type of activity, some of which is covered by this proposed

regulation, would be required to keep records pertaining to the covered activity even if they are not required to keep records relating to exempt activity. Records must include information reasonably available to identify the specific source of each ingredient that was used to make every lot of finished product. Required times for record-retention would be 1 year for perishables destined for final consumption in their perishable state, and 2 years for all other foods or food packaging. Upon a written request, records must be made available to FDA in 4 hours, if the request is made during the normal business hours of 8 a.m. to 6 p.m., or 8 hours otherwise.

3. Require all elements of option 2, except exclude persons that manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging.

4. Require all components of option 3 but do not require persons that are required to establish and maintain records on food to establish and maintain records on the food's outer packaging.

5. Require all components of option 4, but change the required time for responding to an FDA records request to 24 hours.

6. Require all components of option 4, but exempt intrastate businesses.

7. Require all components of option 4, but exempt persons who operate farms, and persons who operate restaurants, who also perform a covered activity.

8. Require all components of option 4, but change the record retention requirement to 1 year for all products.

9. Require all components of option 4, but change the record retention requirement to 2 years for all products.

10. The proposed rule. Require all components of option 4, but only cover foreign facilities also covered by the proposed registration regulation published at 68 FR 5377 (February 3, 2003).

11. Require all components of option 4, but only cover foreign facilities that are the final holder of the product before export to the United States.

12. Require all components of option 4 but cover only domestic persons.

13. Require all components of option 4, but the required information would include the records necessary for facilities to be able to link specific raw ingredients to specific outgoing finished products for all raw ingredients and all products. This option is to analyze the costs and benefits of requiring records that link specific raw ingredients to specific finished products, including ingredients from different sources that are currently commingled before being incorporated into finished products.

In order to clearly identify the marginal cost of each provision specified in the codified, most options represent only one modification of a provision in another option. Option 4 is appropriate to use for comparison with the other options, since it differs by only one provision from almost all other options considered. As the Analysis of Economic Impact section will reflect, FDA has examined the economic implications of this proposed rule by analyzing several regulatory options that address the need for the recordkeeping regulation. FDA is proposing option 10. FDA believes that this option would require creation and maintenance of the records needed to address credible threats of serious adverse health consequences or death to humans or animals while providing adequate flexibility and minimizing industry burden. FDA requests comments on other viable options not considered by this analysis. Note that additional options designed to lower the regulatory burden on small businesses are considered in the initial regulatory flexibility analysis below.

Cost assumptions: The total cost of each of these options will depend on the number of facilities affected and the extra burden these options place on facilities. For all options, FDA would only specify the information a covered entity must keep, but not specify the form or type of system in which those records must be maintained; we expect that for all options, if possible, firms will choose to collect the additional information not currently included in their existing records. Furthermore, FDA assumes that firms will choose to comply with any new requirements by modifying shipping or purchase records such as Bills of Lading, Invoices, or Purchase Orders. In its cost computations, FDA does not take into account other Federal, State, or local regulations that require similar recordkeeping practices for small sectors of the food economy (e.g., ''the BSE rule'', § 589.2000) because of the relatively large amount of uncertainty in our knowledge of existing State and local recordkeeping requirements, and because the effect on the cost computations from their inclusion is likely to be very small. For this reason the analysis does not distinguish among entities that may be covered by the recordkeeping requirements in ''the BSE rule'' which may result in a small overstatement of the costs of the proposed rule. The following discussion of facility counts and per facility costs is not tied to any specific option, but describes the data and assumptions we use to analyze the cost of each option.

Number of facilities and number of firms affected: FDA assumes that for the options that do not consider exemptions, approximately 1,230,000 facilities owned by approximately 960,000 firms would be covered. This number includes domestic facilities that manufacture, process, transport, distribute, pack, receive, hold, or import food or food packaging, and foreign facilities performing any of these activities on food or food packaging destined for consumption or use in the United States. Table 1 contains a summary and breakdown of this estimate.

TABLE 1.—AFFECTED FACILITY AND FIRM DETAILS

Type	Facility Estimate	Facility to Firm Adjust. Factor	Firm Estimate	North American Industry Classification System (NAICS) Codes if Applicable
Domestic				
Manufacturers	43,376	1.17	36,948	3111–3119, 3121
Wholesalers/Warehouses	95,745	1.24	76,952	4224, 4225, 4228, 49312, 49313
Packaging[1]	73,813	1.07	69,266	32221, 32222, 326111, 326112, 326130, 326140, 326150, 326160, 3272, 331315, 331316, 332431, 332439, 42261, 323110, 323111, 323112, 323113, 323114, 323115

TABLE 1.—AFFECTED FACILITY AND FIRM DETAILS—Continued

Type	Facility Estimate	Facility to Firm Adjust. Factor	Firm Estimate	North American Industry Classification System (NAICS) Codes if Applicable
Transporters/Packers	16,773	1.11	15,171	481112, 481212, 483111, 483113, 483211, 4841, 48422, 48423, 488320, 488510, 488991
Retail Grocery and Specialty Food	207,657	1.35	153,277	44511, 445220, 445230, 44529, 445310, 446191,
Convenience Stores	128,985	1.87	68,866	44512, 447110
Mixed-Type Facilities that Have Farms	30,497	1.25	24,397	—
Importers	5,036–32,768	1.25	4,029–26,214	—
Total Domestic	601,883–629,615		448,905–471,090	
Foreign				
Final Holders	77,427	1.25	61,942	
Manufacturers	125,450	1.17	106,858	
Other Facility Types	457,836	1.25	366,269	—
Total Foreign	660,713		535,068	

[1] Includes both outer packaging and food contact substances.

Data sources for the number of facilities and firms affected: Except for the firm-to-facility adjustments explained below, the unit of observation for all data used for this analysis is the number of establishments performing a particular activity. To estimate the number of establishments, FDA uses several sources: The 2000 County Business Patterns (Ref. 1) and the 1999 Nonemployer Statistics from the U.S. Census Bureau (Ref. 2), the FDA Field Accomplishments and Compliance Tracking System (FACTS), the FDA Operational and Administrative System for Import Support (OASIS), and the 1997 National Agricultural Statistics Service (NASS) Survey (Ref. 3). All datasets used in this analysis were the latest available as of the time of writing.

The Census Bureau creates the 2000 County Business Patterns (CBP) by analyzing data from the Business Register, the Census Bureau's file of all known single and multiestablishment companies with at least one employee. Data for single-location firms are obtained from the Economic Censuses, the Annual Survey of Manufacturers, Current Business Surveys, and administrative records from the U.S. Internal Revenue Service, Social Security Administration, and the Bureau of Labor Statistics.

Facilities not included in the CBP are counted in the Nonemployer Statistics, also from the Census Bureau. Nonemployer businesses are companies with no paid employees. The Census Bureau primarily obtains data about nonemployer businesses from business income tax returns filed with the Internal Revenue Service.

The FDA FACTS tracking system is an online database designed to monitor compliance related information for each facility that is regulated by FDA. The database contains an updated list of regulated facilities. FACTS and the Census Bureau use different categories for facilities, making a direct comparison of FACTS with the CBP and Nonemployer Statistics difficult. In our estimates, FACTS facility counts are the primary source of data on importers and foreign facilities, and interstate manufacturers, wholesalers, and warehouses.

Manufacturing, warehouses, wholesalers, and packaging facilities: The primary source for the total (both intrastate and interstate) number of manufacturers, warehouses, wholesalers, and packaging facilities is the 2000 CBP and 1999 Nonemployer Statistics for the NAICS codes identified in table 1 of this document. The NAICS codes identify industry groups and subgroups. Often the data are more aggregated in the 1999 Nonemployer Statistics than in the CBP; when the nonemployer statistics only exist for an aggregated NAICS code, we adjust the total number of facilities identified in the aggregated nonemployer category by the ratio of CBP counts in the relevant subcategory and aggregated category. For example, the 1999 Nonemployer Statistics identified 4,700 facilities under code 4931, but does not break the total down further. Our adjustment changes the 4,700 facilities to 964 [4,700 x (1,461/7,123)] facilities in subcategories 49312 and 49313. The sum of the number of facilities under the codes 49312 and 49313 in the CBP is 1,461, and 7,123 is the number of facilities under the aggregated code 4931 in the CBP.

The term ''packaging'' described by the data used in this analysis varies from FDA's interpretation of ''packaging'' in section 306 of the Bioterrorism Act because it is broader and includes food contact substances, which fall within the act's definition of food. In this economic analysis, we use the term ''manufacturer and distributor'' of outer packaging to refer to all persons who manufacture, process, pack, hold, receive, distribute, transport, or import ''packaging'' as that term is used in the Bioterrorism Act. FDA was unable to find any data that discriminated between outer packaging manufacturers and distributors and those that manufacture or distribute materials that FDA currently regulates as food contact substances, including plastic beverage bottles and inner cereal box liners. The data used for the analyses include the number of manufacturers and distributors of the following types of packaging: Paperboard containers, paper

bags and treated paper, plastic bags, bottles, laminated plastics and other plastic materials, polystyrene and urethane foam products, glass products, and metal and aluminum can, sheet, plate, and products. Furthermore, printing services and label producers are included such as lithographic, gravure, flexographic, screen, digital, and quick printing services.

Transporters and packers: Although the CBP and Nonemployer statistics distinguish passenger and nonpassenger transport, they do not separately identify establishments engaged in the transport of food. Based on a comment received through our preliminary outreach activities, FDA assumes that 20 percent of the specialized freight transport industry is engaged in food transport. FDA requests comments on this assumption. The largest category in transport and packing is trucking.

Mixed-type facilities that engage in farming: Firms engaged in covered activities would be required to keep records on these activities as discussed above, even if those firms were mixed-type facilities that engage in farming. Covered activities conducted on mixed-type facilities that engage in farming potentially comprise a large percentage of the activity conducted at these facilities. For example, manufacturing or processing for farms includes canning, freezing, cooking, pasteurization, homogenization, irradiation, milling, grinding, chopping, slicing, cutting, coloring, waxing, shelling of nuts, peeling, labeling, and packaging. Facilities with farms will be considered mixed-type facilities if they alter the general state of the commodity, use any ingredients obtained from another source, and then sell or transfer the product for final use offsite.

To estimate the number of mixed-type facilities that engage in farming that would be affected by this rule, FDA uses the 1997 USDA NASS Census of Agriculture and data obtained from various county level Cooperative Extension Service (CES) offices. The Census of Agriculture provides the total number of farms producing specific commodities. To estimate the number of farms that are part of mixed-type facilities, FDA used a sample of counties with information from their respective CES offices. CES offices from Clay County, Kansas; Monterey, Sonoma, Marin, and San Diego counties in California; Jackson County, Wisconsin; Gillespie and San Saba counties in Texas; Carol County, Maryland; and Berks County, Pennsylvania provide data on the percentage of farms producing specific commodities that could be considered mixed-type facilities (Ref. 4). Table 2 presents the estimated number of mixed-type facilities that engage in farming by type of farm. While some of the facilities described in table 2 may qualify as roadside stands for some of the products that are sold from these facilities (and would not be subject to recordkeeping requirements for those products), we were not able to distinguish between facilities that would qualify as roadside stands and mixed-type facilities that engage in farming. The numbers of mixed-type facilities that engage in farming listed in table 2 may be overstated to the extent that they qualify as roadside stands. The estimated total is 30,497. FDA requests comments on the methods used to estimate the numbers of mixed-type facilities that engage in farming and for identifying the number roadside stand facilities.

TABLE 2.—MIXED-TYPE FACILITIES THAT ENGAGE IN FARMING

Commodity	Total No. of Farms	Percent Mixed-Type	No. of Mixed-Type Facilities that Engage in Farming
Pig Farms (Feed Mixing)	46,353	1.5%	695
Cattle (Feed Mixing)	785,672	1%	7,857
Poultry (Feed Mixing)	36,944	1%	369
Other Animal Production (Feed Mixing)	110,580	1%	1,106
Dairy	86,022	1.1%	903
Grain, Rice, and Beans	462,877	1%	4,629
Apples	10,872	1.5%	163
Oranges	9,321	1.5%	140
Peaches	14,459	1.5%	217
Cherries	8,423	1.5%	126
Pears	8,062	1.5%	121
Other Fruit	29,413	1.5%	441
Nuts	14,500	2%	290
Berries	6,807	1.5%	102
Grapes	11,043	10.5%	1,160
Olives	1,363	3.5%	48
Vegetables and Melons	31,030	0.5%	155
Organic vegetables	6,206	50%	3,103

TABLE 2.—MIXED-TYPE FACILITIES THAT ENGAGE IN FARMING—Continued

Commodity	Total No. of Farms	Percent Mixed-Type	No. of Mixed-Type Facilities that Engage in Farming
Honey	7,688	50%	3,844
Syrup	4,850	100%	4,850
Herbs	1,776	10%	178
Total			30,497

Importers: FDA bases the number of importers on a database collected from shipment records that list all companies that were listed as importers or consignees for a covered product in 2001. These data were collected through FDA's OASIS system, which is an automated system for processing and making admissibility determinations for shipments of FDA-regulated products seeking to enter U.S. domestic commerce. Many of these facilities are of a type that would already be counted in the FDA FACTS or CBP (or nonemployer statistics) data. In order to avoid double counting, FDA assumes the following: (1) Any facility that identifies itself through its name as being a facility type covered by the CBP will already be counted in the CBP; (2) any facility that is a consignee only will already be counted in the CBP since its main business is not simply importing; (3) any facility self-identified as an importer only is not in the CBP; and (4) all other facilities will be considered in an uncertain range of facilities affected. Since it is uncertain whether these facilities would already be counted in the CBP, we will use a uniform distribution to assign a probability of double counting in all of our cost estimates. For example, if the uniform distribution generates a probability of 0.5, then we will assume that half of these unclassified facilities are already in the CBP. A uniform distribution implies that any probability from zero to 100 is equally likely. FDA requests comments on these assumptions.

Foreign establishments: FDA estimated the number of foreign manufacturing establishments that will be affected by the regulation from a count of foreign manufacturers identified in the OASIS system. We were unable to find reliable data on the number of foreign nonmanufacturing establishments and made the following assumptions to estimate their numbers: For the final holders of the article before the food or food packaging is imported into the United States, we assumed the same number of facilities as on the domestic side of the importation process, for a total of approximately 77,000 foreign final holders. For other firm types, we assumed that the ratio of foreign to domestic facilities of other types is approximately equal to the ratio of foreign to domestic manufacturers. We also assumed that the facility to firm ratio is the same for both foreign and domestic establishments. We request comments on the assumptions used to arrive at these estimates, as well as on reliable sources of data that would improve these estimates.

Firm adjustment: Even though recordkeeping requirements apply to each facility within a firm, some of the overall burden will be estimated at a firm level in order to better capture the true burden of the regulation. In order to estimate the number of firms affected, we used the 1999 Statistics of U.S. Businesses, also from the U.S. Census Bureau (Ref. 5). This dataset is based on the CBP and Nonemployer Statistics, but calculates both the number of establishments and the number of firms for each NAICS code. The Census Bureau has not updated this dataset for the latest 2000 CBP, so we use the 1999 ratio of establishments to firms to adjust the 2000 CBP and 1999 nonemployer establishment count numbers to firm numbers.

Costs per facility or per firm: Some costs of the regulatory options apply to firms, while other costs apply to individual facilities. FDA assumes that the costs to facilities are the same for transfers within firms as for transfers between firms. We request comments on this assumption. Costs fall into several broad categories:

Additional record information: Any possible new regulation may require more information on the input, output, or source ingredients than is kept in existing food facility records. A limited amount of new information could be accommodated by a simple redesign of existing records, whereas requiring more new information may require a completely new design and collection. The extreme version of this requirement is explored under option 13: requiring all raw ingredients to be connected through records to all final products would cause a substantial change in recordkeeping and other business practices for many commingled commodities.

Information Collection and Maintenance: The burden of maintaining extra information is a direct function of the amount of information required by this proposed regulation that is not normally collected by industry. This burden estimate will be substantially correlated with the redesign burden described previously.

Storage time: A longer storage time may place more of a burden on industry, but will also increase the probability of having records available should an outbreak occur. The major determinant of the impact on costs of storage time requirements is whether the proposed storage times will be longer than normal industry practices. FDA believes that the storage times proposed in option 2 are within normal industry practices. Requiring longer retention times than those proposed in option 2 for records on perishable foods might impose an additional burden. This issue is discussed in more detail below and in options 2, 8, and 9.

Records access time: As in storage time, the major determinant of the impact of any required response time for records access is what firms would reasonably be able to achieve in an emergency situation with current business practices.

Data sources and cost estimates common to options:

Labor costs: For all labor costs, FDA used a wage rate for an administrative worker of $25.10 from the Bureau of Labor Statistics occupational wage rates for the year 2000 (Ref. 6), doubled to include overhead costs. We assume that all labor for all options is by administrative workers. FDA lacks wage data specific to each of the foreign countries that export to the United States, so we used the wage rate for an administrative worker in the United States for the foreign wage rate. We

assume that the nature of the worker and the worker's wage would be about the same in foreign countries as in the United States. In open markets where trade takes place, real wage rates tend to be equal for similar work and productivity across countries.

Learning costs: Foreign and domestic facilities will incur administrative costs in order to learn how to comply with any new regulation. Because most of the facilities covered by the proposed registration rule would be covered by this proposed rule, the administrative costs will be shared between the registration and recordkeeping rules. Those establishments covered by both regulations will probably search for information on both regulations at the same time and find information in the same places. Therefore, the learning cost estimates presented here probably overestimate the costs actually incurred by firms covered by both rules since there is the potential for double counting. The potential for double counting occurs in estimates of costs for firms covered by both rules. These include domestic manufacturers, wholesalers, warehouses, mixed-type facilities that engage in farming, foreign final holders, foreign manufacturers, and importers in any of these categories.

Facilities will become aware of these requirements through normal business activities: Reading trade press, reading industry news, FDA outreach, or conversation with other business operators. Because facility operators or owners must be aware of the requirement to change their activity, we assume that becoming aware of the regulations will occur as part of normal business practice and so have no economic costs for the facility. There may be costs incurred, however, by FDA or trade organizations to undertake the outreach.

Once the owner or operator of the facility becomes aware of the regulations, he or she will need to research the requirements of the regulation, which will require searching for a copy of the requirements and reading and understanding them. Owners or operators may search for a copy of these requirements on the Internet or at a library. FDA received comments indicating that many businesses might not have access to the Internet. Searching costs will be higher for facilities that do not have access to the Internet and have to write to FDA or find other sources of information. In the United States, 59.1 percent of the population accessed the Internet at least once in the 3 months prior to being surveyed (Ref. 7). A Small Business Administration (SBA) report cites two studies that report 40 and 47 percent of small businesses had Internet access in 1998 (Ref. 8). An updated report from Dunn and Bradstreet in 2002 reports that 71 percent of small businesses have Internet access (Ref. 9). Therefore, FDA assumes that 71 percent of domestic facilities will search for the requirements for both regulations electronically. FDA estimates it will take domestic facilities with Internet access 1 hour to search for the requirements, and domestic facilities without Internet access 2 hours to search for the requirements. FDA requests comments on these assumptions.

FDA expects foreign establishments to go through the same searching, reading, and comprehending steps as domestic establishments. Costs for searching, reading, and comprehending the regulation requirements will be higher for some foreign establishments than for domestic establishments due to distance and language differences. Costs for searching, reading, and comprehending for some foreign establishments may be so high that, rather than become informed about the requirements before shipping, they learn about the requirements after shipments to the United States have been made. Costs for searching, reading, and comprehending for foreign facilities will vary depending on: (1) Whether the worker researching the regulatory requirements or the person who manufactures, processes, packs, transports, distributes, receives, holds, or imports food or food packaging can read and write in English; and (2) the level of Internet access available in exporting countries.

The percent of foreign facilities with Internet access will be lower than in the United States. Although 71 percent of the small businesses in the United States have Internet access, only 3 percent of the population of China, the country that has the largest number of manufacturers that export to the United States, has access to the Internet (Ref. 7). To get an idea of how many facilities that export to the United States have access to the Internet, FDA looked at Internet access for the 26 countries that represent 80 percent of the manufacturers that export to the United States (OASIS) and the percent of the population that has access to the Internet worldwide for the remaining 20 percent. A weighted average of these 26 countries by the number of manufacturers suggests that 26 percent of the population that exports to the United States has Internet access. Because businesses are more likely to have Internet access than individuals, FDA adjusts the percent of the populations of other countries with Internet access upward by the percent difference in Internet access between individuals and small businesses in the United States. Seventy one percent of small businesses in the United States have Internet access versus 59 percent of the population, or the percent of businesses with Internet access represents a 20 percent increase over the population. Applying this adjustment to Internet access in foreign countries increases the percent of businesses with Internet access from 26 percent to 31 percent. FDA therefore assumes that 31 percent of foreign manufacturers would be able to research the new requirements electronically. Regardless of whether the cost of obtaining Internet access is borne by the facility, or by a third party, for ease of computation FDA estimates the cost per facility. FDA expects that, due to the overall lower level of Internet access in foreign countries, it will be more difficult for foreign facilities without Internet access at their place of business than it will be for domestic facilities to access the Internet elsewhere. FDA assumes it would take foreign facility operators that do not have access to the Internet 5 additional hours to search for the recordkeeping requirements. FDA requests comments on these assumptions.

In addition to search costs, there are costs for reading and comprehending the regulation requirements. Reading costs depend on the length of the document that describes the requirements and the reading speed of the user. Costs for comprehending the regulation requirements are linked to the reading speed of the user. For purposes of simplicity FDA assumes that, on average, the user comprehends the requirements described in the regulation after one reading. FDA requests comments on this assumption.

The online speed-reading training course, TurboRead Speed Reading (Ref. 10), estimates that the average reading speeds for the vast majority of the worlds' readers is between 200 and 250 words per minute. Dividing the approximate length of the current proposal (approximately 44,450 words) by an average speed of 225 words per minute yields an estimate of the time required to read the regulation of about 3 hours and 18 minutes. Because the length of the document may change and the approximate nature of the calculation, FDA rounds up to the nearest half-hour to 3 1/2 hours for the time required for reading and comprehending the requirements of this rule for all English reading users. FDA requests comments on this assumption.

Users who have limited ability to read English may take longer to read and comprehend the requirements. Comments suggest that many foreign manufacturers are limited in their ability to read and write English. Estimates of the number of people outside of countries where English is the primary language who are able to speak English fluently vary widely, ranging from 300 million to 750 million (Ref. 11). To estimate the number of English speakers outside of the United States, FDA adds the number of English speakers in countries where English is the primary language, excluding the United States (151 million), the number of English speakers in countries where English is a secondary language (300 million), and the midpoint (525 million) of the range of the estimate of the number of speakers of English as a foreign language. FDA then divides this total number of English speakers by 5.9 billion—the world population minus the U.S. population (Ref. 11) to tentatively conclude that 16 percent of foreign manufacturers read and write English well enough to research the recordkeeping requirement directly. FDA requests comments on this calculation. Facilities without the capacity to read and write English would have to hire a translator to aid them in comprehending the regulatory requirements. Alternatively, trade groups, distributors, or the government may provide translation services. Regardless of whether the translation is paid for directly by the registrant or a third party, for ease of computation we assume there is a cost for translation for 84 percent of foreign facilities. FDA assumes it would take foreign facility operators who do not understand English 5 additional hours to read and comprehend the recordkeeping requirements. FDA requests comments on these assumptions.

Table 3 summarizes these cost estimates, which do not differ across any of the options that do not grant exemptions. These include costs for searching, reading, and comprehending the requirements of the rule for English and non-English speaking users, and for users with and without Internet access.

TABLE 3.—LEARNING COSTS

	Firm Count	Cost (at labor rate of $25.10)	Average Learning Costs per Firm
Domestic			
Manufacturers	43,376	$5,215,000	$120
Wholesalers/Warehouses	95,745	$11,511,000	$120
Packaging[1]	73,813	$8,875,000	$120
Transporter/Packer	16,773	$2,017,000	$120
Retail Grocery and Specialty Food	207,657	$24,966,000	$120
Convenience Stores	128,985	$15,508,000	$120
Mixed-Type Facilities that Engage in Farming	30,497	$3,667,000	$120
Importer	5,036	$605,000	$120
Total Domestic	601,883	$72,364,000	$120
Foreign			
Final Holders	77,427	$23,613,000	$305
Manufacturers	125,450	$38,258,000	$305
Other Facility Types	457,836	$139,624,000	$305
Total Foreign	660,713	$201,495,000	$305

[1] Includes both outer packaging material and food contact substances.

New and closing facilities: In future years new businesses will open and existing businesses will close. Since the total number of firms in the food industry remains stable from year to year, we assume that the rate at which new firms enter the industry is the same as the rate at which existing firms leave the industry. The Small Business Administration estimates that in 2000 approximately 10 percent of all businesses were new businesses and 10 percent of all businesses closed (Ref. 31). FDA estimates that new businesses will also have to incur learning costs.

New information collection costs: These costs include the burden of redesigning records to accommodate new information specified in possible options, and the burden of collecting and maintaining that new information within the recordkeeping system.

Records redesign: In order to estimate the cost of adding additional information to a firm's records, we used the Label Cost Model developed for FDA by RTI International (Ref. 13). We modified this model to estimate the graphic design and printing cost for adding information onto existing records such as Bills of Lading, Invoices, and Purchase Orders. We also used the model to estimate the cost of designing an entirely new input-to-output ingredient record for part of option 13.

Based on a sample of bills of lading collected through FDA's early outreach efforts and through the Web sites of companies and trade associations, FDA assumes that firms already collect most

of the information necessary to comply with options 2–12. Bills of lading, purchase orders, or invoices typically have the full address of all parties, the transaction date, and descriptions of the relevant food articles. Based on the samples, FDA assumes that firms will have to add a limited amount of new information to their standard documents. This new information principally depends on how the precise definition of ''description of the food article'' developed in these regulations differs from that commonly used by industry under its current recordkeeping practices. In some of the sample bills of lading the description of the food article being transported did not have the precision required under these proposed regulations. In addition, some bills of lading did not have a design that would allow for the identification of other entities in custody, or control of the transported food articles, or an official spot to record the mode of transportation.

The FDA Labeling Cost Model was designed to estimate the costs of designing and printing new food labels, but many of the design issues should be similar when designing and printing a new food product record. For example, both a label and a document designer must make similar decisions regarding wording and spacing, and both activities should include administrative activity, graphic design, and printing. The model also includes cost categories, such as analytical testing and focus groups that we do not use, since they are not relevant for document redesign. FDA does acknowledge that these estimates are only approximations; we believe the values this model generates are reasonable, and request comments on all assumptions. For the purposes of the analysis of options 2–12, FDA assumes a limited information, one-color redesign of a paper document. For the purposes of option 13, FDA assumes an additional full design of a new paper document.

The model also includes an estimate of central tendency, and a low and a high estimate for each cost category included in the document redesign cost. For each component of cost in this model, FDA's contractor, RTI International, received a range of estimates from food companies. The lowest of these estimates is considered the limit of the low range, and the highest of the estimates is considered the limit of the high range. The low and high range of total cost is calculated by adding together all of the low and high range estimates of each component cost, so the low and high range estimates of this model are unlikely. The estimated cost of a limited information redesign in year 1 is $1,309, with an uncertainty range of between $897 and $2,299. The estimated cost of a full information redesign in year 1 is $6,193, with an uncertainty range of between $4,653 and $11,198. The label cost model estimates an approximately 10 percent efficiency savings in redesign costs incurred by very small firms in year 2.

The cost of redesigning product records will not be borne by all firms. For each step in the chain of custody, copies of the same bills of lading or invoices probably will be used for records of the immediate previous source, records of the immediate subsequent recipient, and transportation records. Consider the following example of a long chain of custody for a food product: (1) Farmer, (2) transporter, (3) bulk collection (e.g. grain silo), (4) transporter, (5) processor, (6) transporter, (7) warehouse, (8) transporter, and (9) retailer. The number of entities in this series is clearly limited by the total number of transporters in the country, so FDA assumes that all transporting firms have to redesign their records. This supply chain should generate four sets of bills of lading and four sets of invoices for all products. Similarly, a six-step supply chain should generate three separate sets of records. Since farmers are exempt under this proposed regulation, the number of records possibly containing new information is roughly equal to the number of facilities in the supply chain, but FDA assumes a substantial number of nontransporters will depend on storing only the redesigned bill of lading to comply with the regulation. Assuming an equal probability of a firm using the bill of lading or redesigning its own documents, FDA assumes that half of the nontransporting firms will incur redesign costs.

We modify this estimate for convenience stores. Individual convenience stores have a small sales volume and—according to a comment received during FDA's early outreach efforts—only 11.4 percent of their average total sales are for food products. In addition, the majority of convenience stores are locally owned franchises of large corporations, and these stores may have access to the parent corporation to assist in redesign. FDA therefore assumes that 90 percent of convenience stores will rely on other parties for records redesign. The total costs for other firm types may also be an overestimate; FDA expects that trade groups may assist in the needed redesign of existing records, further lowering the burden, but we do not estimate the cost savings for this activity.

In addition, we make a further adjustment for foreign facilities: According to comments received, firms exporting from the European Union (EU) are already subject to similar recordkeeping requirements under EU regulation 178/2002. Article 18: *Traceability* of the EU regulation states: * * *

(1) The traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into a food or feed shall be established at all stages of production, processing and distribution.

(2) Food and feed business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed. To this end, such operators shall have in place systems and procedures, which allow for this information to be made available to the competent authorities on demand.

(3) Food and feed business operators shall have in place systems and procedures to identify the other businesses to which their products have been supplied. This information shall be made available to the competent authorities on demand * * *. (Ref. 14).

Because of these regulations, FDA assumes that the firms from EU member states (31.9 percent of all foreign firms that export to the United States) will already be subject to recordkeeping requirements similar to the requirements of this proposed rule. Therefore these foreign firms would not have to redesign their records and would not incur a redesign burden.

Additional records maintenance: FDA expects that personnel at most facilities will incur a burden in order to collect and maintain a limited amount of additional information. However, as in the redesign section previously discussed in this document, FDA assumes that one set of records can serve as source, transportation, and recipient records, so the estimated burden of collecting and maintaining the additional information will be shared among more than one facility.

FDA does not have a direct estimate of this recordkeeping burden; we rely on a previous analysis of Juice Hazard Analysis and Critical Control Point (HACCP) recordkeeping (Ref. 15) because that analysis also dealt with the costs of additional recordkeeping. In that analysis an estimate of 3 minutes per hour is made of the burden that would be incurred by some food

processing facilities for the additional monitoring of critical control points and keeping HACCP system records that would be required. In this proposed rule the additional monitoring activities required would be negligible since records will likely only need to be modified. Furthermore, compared to the Juice HACCP requirements, there would be less additional information that would need to be maintained in this proposed rule. If the weekly burden for additional monitoring and recordkeeping required for Juice HACCP compliance is 120 minutes (assuming 3 minutes per hour of additional monitoring and recordkeeping for 8 hours a day and 5 days a week) a burden estimate of about 6 minutes per day or 30 minutes per week seems reasonable for this proposed rule. We request comments on this assumption. FDA treats foreign facilities already subject to a similar recordkeeping regulation as already in compliance, and assumes that the burden of additional records maintenance will be shared among an average of two covered entities, including transporters, for an average of 15 minutes per week per facility or 13 hours per year per facility.

Grocery stores, convenience stores, and packaging producers and distributors may have different additional records maintenance burdens. Since, under the proposed rule, grocery stores only have to maintain immediate previous source records, their additional burden may be lower but they also receive many shipment records they would need to maintain. In a comment FDA received during our early outreach efforts, a large retail grocery chain estimated that they received approximately 300 purchase orders per store per year, or approximately 6 purchase orders per week per store. A purchase order could contain many invoices and may be more of a burden to maintain, so FDA considers the estimated additional burden of 15 minutes per week reasonable for grocery stores. We request comments on the assumptions used to derive this estimate.

Convenience stores have a lower records maintenance burden than grocery stores. According to comments received during our early outreach efforts, approximately 50–70 percent of grocery store stock keeping units (SKUs) are food products, while only 11.4 percent of the sales of convenience stores are from food products. SKUs and sales are not equivalent measures of size, but this comparison is a reasonable basis to lower the estimated additional burden for convenience stores relative to grocery stores. Dividing the grocery store burden by the ratio of the percent of food sales for convenience stores and grocery stores (assumed to be 60 percent, or an average between 50 percent and 70 percent of SKU totals) yields an additional records maintenance burden of approximately 2.5 hours per year for convenience stores. We request comments on the assumptions used to derive this estimate.

Finally, the data sources do not distinguish between facilities that produce packaging for food and packaging for other products. Although we assume that all packaging facilities potentially could be producing or handling food packaging, not all of their output would be dedicated in this way. We assume that, for the average packaging facility, 50 percent of the output is for food packaging and that an information collection burden of 50 percent would be required of packaging facilities. We request comments on this assumption.

Storage costs: Although FDA does not believe the marginal burden of storing records to the specified times in any of the options is zero, evidence on record storage times suggests that the burden would be minimal. Since FDA was unable to gather any evidence suggesting the size of this extra burden, however small, and since the specified storage time requirement in these options is well within industry norms, we estimate the cost for extra storage time to be zero.

Many comments received in response to FDA's early outreach supported requirements of either 1 year for perishable products or 2 years for nonperishable products, stating that the maximum allowable 2-year requirement was both reasonable and necessary. In addition, a survey of dietary supplement manufacturing practices conducted by FDA's contractor, RTI International, asked a representative sample of dietary supplement manufacturers how long they kept records of shipped ingredients (Ref. 16). The facilities had a choice of two response types: Keeping records a certain amount of time past the date of expiration, and keeping records a certain amount of time past the manufacturing date. The survey did not distinguish between perishable and nonperishable ingredients. Because of nonresponse weighting, stratification, and deductive disclosure problems, FDA's contractor, RTI International, did not report confidence intervals for these estimates, but the mean number of years that firms kept data records was 2.31 years for facilities that reported retention from the date of the expiration of the ingredient, and 4.57 years for facilities that reported retention from the date of product manufacture. The lowest mean response from any facility category was 1.94 years from the expiration date of the ingredient, which is still probably more than 2 years from the delivery date.

Access costs: For purposes of evaluating the marginal cost of the record access time provision, FDA considered two possible requirements: The combination of 4 hours during normal business hours and 8 hours at other times, or 1-day regardless of when the request was made. Accessing records in a shorter time period than what industry is currently capable of will impose a burden on firms and facilities, and the shorter the required response time the larger the burden. The cost of records access response fall into two categories: Costs that would be incurred only in the event that FDA requests records under this authority, and costs that would be incurred to plan for records access and to change business practices to allow for a rapid response. The latter costs would be incurred regardless of whether or not FDA ever requested records under this authority.

For the first cost, FDA expects that in the event of a records request under this authority, any access requirements less than the current average access time of 2–3 days would impose a burden on businesses involved in providing those records. All other things equal, a 4-hour or 8-hour requirement would probably impose a greater burden than the 1-day requirement. However, we cannot quantify the probability of this burden for the same reason as the lack of quantification in the benefits section: It is impossible to predict when FDA will have to invoke this authority in response to an adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

For the second cost, FDA assumes that a 1-day records access time requirement is approximately the shortest possible response time that would not compel some firms to change their business practices. The costs for a 1-day records access requirement are considered in option 5. We assume that the 4-hour or 8-hour response time required in all options except option 5 is more likely to compel business practice changes and preemptive emergency planning than is the 1-day response requirement. A 1-day response time is possible with the types of recordkeeping systems currently in use, including automated recordkeeping technology, and offsite storage and paper retrieval. While the average access

time for FDA traceback investigations is 2–3 days, we believe the same information could be provided in one day with the types of recordkeeping systems currently in use. Therefore, the difference between the cost of a 2–3 day response time and a 1-day response time is assumed to be negligible. However, the shorter access time requirements of 4 hours or 8 hours would likely impose a new burden on a number of firms.

FDA assumes that regardless of whether or not the firms maintain records electronically, every firm would probably have to devise a predetermined compliance strategy to deal with the situation where FDA requested records under this authority. Furthermore, a comprehensive response plan may allow firms to maintain their current business practices, such as maintaining paper records or maintaining records offsite, and still comply with a request, so it may be the lowest cost solution. Therefore, as a first estimate of the potential impact of this proposed rule, FDA assumes a burden for each firm of devising a response plan that could accommodate a 4-hour or 8-hour access time for an FDA record request. Since European firms are required to supply their tracing records on demand to the appropriate authorities, FDA assumes that they already have in place a plan that would accommodate a 4-hour or 8-hours records required response time. (Ref. 14).

In the analysis of previous regulations, we estimated a related planning cost for food firms. In the juice HACCP rule, (Ref. 15), we estimated a 60-hour labor burden per firm of developing a HACCP plan. Developing a HACCP plan is very complicated and includes the establishment of: (1) Critical control points and critical limits for every hazard identified, (2) protocols on how to manage deviations from these limits, and (3) procedures for verifying and validating all aspects of the plan. By contrast, developing a records access plan requires: (1) Evaluating current recordkeeping practices including records maintenances and records storage practices, which we assume would take on average about 3 hours; and (2) identifying and planning for any changes in recordkeeping practices that would be required, which we assume would also take on average about 3 hours. FDA considers the planning needed to deal with a possible records request under this authority much less complicated than what would be needed in a HACCP plan. If developing a HACCP plan takes 60 hours, then 6 hours of administrative labor per firm (lowered to 3 hours per convenience store firm) is a reasonable estimate of the burden imposed from this planning requirement, which is far more simple than a HACCP plan. We request comments on this assumption. FDA estimates that new businesses will also have to incur records access costs.

FDA requests comments regarding how many firms may need to adopt a new records retention strategy under both the 4-hour or 8-hour, and 1-day records access time requirements, and the additional time and capital needed to comply with these requirements. We plan to conduct further research on all of these burden estimates before publishing the final rule, and expect that the estimates could change.

Option 2: Comprehensive foreign and domestic coverage with 4-hour and 8-hour records access times and 1 and 2 year records retention times.

FDA assumes that facilities currently collect and keep records with most of the information required by this option in their normal business activities. FDA assumes that learning and redesign costs will be incurred per firm, and that the additional records maintenance costs will be incurred per facility. For all options the learning costs are explained in the general cost section above.

Redesign Costs, option 2. Table 4 of this document presents the average redesign cost calculations. For the purposes of presentation, Table 4 only includes calculations for the mean number of exclusive importers affected. FDA assumes that large and small firms incur all redesign costs in the first year following the final rule, while very small firms will incur all redesign costs in the second year following the final rule. The label cost model estimated planning efficiencies of 10 percent for redesign processes further than 1 year in the future, and this savings is included in the categorical totals in table 4.

TABLE 4.—REDESIGN COSTS, OPTION 2

	Firm Count	Middle Estimate	Low Estimate	High Estimate	Average Middle Cost per Firm
Domestic					
Manufacturers	18,474	$22,488,000	$15,402,000	$39,497,000	$1,217
Wholesalers/Warehouses	38,476	$46,601,000	$31,916,000	$81,845,000	$1,211
Packaging[1]	34,633	$42,092,000	$28,827,000	$73,926,000	$1,215
Transporters/Packers	15,171	$18,243,000	$12,494,000	$32,040,000	$1,203
Retail Grocery and Specialty Food	76,639	$92,308,000	$63,220,000	$162,122,000	$1,204
Convenience Stores	6,887	$8,415,000	$5,763,000	$14,779,000	$1,222
Mixed-Type Facilities that Engage in Farming	12,199	$14,786,000	$10,127,000	$25,969,000	$1,212
Importers	7,561	$9,165,000	$6,277,000	$16,096,000	$1,212
Total Domestic	210,038	$254,098,000	$174,026,000	$446,274,000	$1,210
Foreign					
Final Holders	21,091	$25,565,000	$17,509,000	$44,900,000	$1,212
Manufacturers	36,385	$44,103,000	$30,205,000	$77,459,000	$1,212

TABLE 4.—REDESIGN COSTS, OPTION 2—Continued

	Firm Count	Middle Estimate	Low Estimate	High Estimate	Average Middle Cost per Firm
Other Facility Types	124,714	$151,170,000	$103,532,000	$265,500,000	$1,212
Total Foreign	182,191	$220,838,000	$151,246,000	$387,859,000	$1,212

[1] Includes both outer packaging and food contact substances.

Additional records maintenance: Table 5 of this document presents the calculations for additional records maintenance costs. Based on the previous discussion, the annual burden per facility that is assumed in the computation of the cost of additional records maintenance is: 13 hours for most facilities, 2.5 hours for convenience stores, and 6.5 hours for packaging facilities. A $25.10 hourly wage is also assumed in the computation. For example, the additional records maintenance costs for manufacturers reported in the top row of Table 5 is calculated by multiplying the number of facilities (43,376) by the number of hours required (13) and the hourly wage ($25.10).

In Table 5, variation in the number of importers reflects the range of uncertainty in the data on the number of these facilities. Additional records maintenance costs are assumed to be incurred by facility. The estimated average cost per firm for additional records maintenance is also reported in table 5 and is computed using the facilities-to-firm adjustment factor reported in table 1. FDA assumes that facilities will begin to incur the additional records maintenance burden in the second year following the enactment of the final rule. There is considerable nonquantified uncertainty surrounding these estimates; FDA requests comments.

TABLE 5.—ADDITIONAL RECORDS MAINTENANCE COSTS, OPTION 2

	Facility Count	Cost	Average Cost per Firm
Manufacturers	43,376	$14,154,000	$383
Wholesalers/Warehouses	95,745	$31,242,000	$406
Packaging[1]	73,813	$12,043,000	$174
Transporters/Packers	16,773	$5,473,000	$361
Retail Grocery and Specialty Food	207,657	$67,759,000	$442
Convenience Stores	128,985	$8,094,000	$118
Mixed-Type Facilities that Engage in Farming	30,497	$9,951,000	$408
Importers	5,036	$1,643,000	$408
Total Domestic	601,883	$150,359,000	$335
Foreign			
Final Holders	52,728	$17,205,000	$278
Manufacturers	85,431	$27,876,000	$261
Other Facility Types	311,786	$101,736,000	$278
Total Foreign	449,945	$146,817,000	$274

[1] Includes both outer packaging and food contact substances.

Access costs: For the purposes of this analysis, as mentioned above, FDA assumes that the 4-hour or 8-hour records access times in option 2 imply extra planning and may imply a change in record retention practices for many firms. FDA has little information on the possible impact of this requirement, and requests comments. As previously discussed, the computation of the access costs reported in Table 6 of this document assumes a 6-hour burden per firm for developing an access plan and a $25.10 hourly wage. FDA assumes that all access planning costs will be incurred in the first year following the final rule for large and small firms, and in the second year following the final rule for very small firms. Table 6 presents the calculations.

TABLE 6.—ACCESS COSTS OPTION 2

	Firm Count	Cost	Average Cost per Firm
Domestic			
Manufacturers	36,948	$5,564,000	$151
Wholesalers/Warehouses	76,952	$11,589,000	$151
Packaging[1]	69,266	$10,431,000	$151
Transporters/Packers	15,171	$2,285,000	$151
Retail Grocery and Specialty Food	153,277	$23,084,000	$151
Convenience Stores	68,866	$5,186,000	$75
Mixed-Type Facilities that Engage in Farming	24,397	$3,674,000	$151
Importers	4,029	$607,000	$151
Total Domestic	448,905	$62,420,000	$139
Foreign			
Final Holders	42,182	$6,353,000	$151
Manufacturers	72,770	$10,959,000	$151
Other Facility Types	249,429	$37,564,000	$151
Total Foreign	364,381	$54,876,000	$151

[1] Includes both outer packaging and food contact substances.

Total quantified costs for option 2. Table 7 of this document presents the total quantifiable startup and recurring costs for option 2, and a range of uncertainty based on the uncertain number of exclusive importers and the range of uncertainty in design costs. We calculated the range of uncertainty using the 5th and 95th percentiles of the range of costs, with a uniform distribution of importers and a separate triangular distribution of redesign costs for each facility category and size. Both distributions represent the most amount of information implied by the known characteristics of the uncertain ranges. This procedure allows each component of cost uncertainty to vary independently, but this range cannot be interpreted in probabilistic terms.

Table 7 of this document presents the range of undiscounted annual costs of future compliance for option 2. Costs incurred in year 1 are learning costs for all existing firms, redesign costs for large and small firms, and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. The cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate. Table 8 presents the discounted annual costs incurred in future years and the present value of total costs incurred for option 2. The computations are made using the mean costs, and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms ($341,669,000 reported in Table 7), they are reported in discounted terms for each year in Table 8 to account for the fact that a dollar in 5 years, for example, is worth less than a dollar today. Each cell that contains only the symbol ''::'' is meant to convey the continuation of the series depicted in the cells that precede it from above. FDA acknowledges considerable nonquantifiable uncertainty in the estimates presented in Table 7 and requests comments.

TABLE 7.—TOTAL ANNUAL COSTS, OPTION 2

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$412,474,000	$389,256,000	$432,307,000	$415
Year 2	$737,595,000	$665,189,000	$816,183,000	$741
Year 3 and later years	$341,669,000	$327,575,000	$355,445,000	$343

TABLE 8.—DISCOUNTED ANNUAL COSTS, OPTION 2

Year 1	$412,474,000
Year 2	$689,341,000
Year 3	$298,427,000
Year 4	$278,904,000
Year 5	$260,658,000
Year 6	$243,605,000
:[1]	:
:	:
Year 15	$132,505,000
:	:
:	:
Year 30	$48,026,000
:	:
:	:
Present Value	$5,663,484,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 3: Require all elements of option 2 (comprehensive coverage, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except persons who manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging are excluded.

FDA identifies the option excluding outer packaging facilities separately because the fundamental risk to the public from contaminated packaging is probably different from the risk associated with contaminated food, including inner materials that are food contact substances.

FDA was unable to find any data that discriminated between outer packaging manufacturers and distributors and those that manufacture or distribute materials that FDA currently regulates as food contact substances, including plastic beverage bottles and inner cereal box liners. The possibility exists that some of these data describe manufacturers and distributors of outer packaging materials only, and the remainder describe manufacturers and distributors of both outer packaging materials and food contact substances. To distinguish between manufacturers and distributors of outer packaging materials and food contact substances, we assume that the data is distributed uniformly over the interval between 0 and 1, and each packaging facility has an equal probability (0.5) of being either one or both types of facilities. Based on this distributional assumption, the expected number of manufacturers and distributors of outer packaging materials exclusive of food contact substances is 36,906.5 (or 73,813 divided by 2). We request comments on this distributional assumption.

The range and discounted costs for option 3 are estimated to be the same as for option 4, as explained in the following paragraphs, and are reported in tables 9 and 10. The discount computations are made using mean costs. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $334,682,000 reported in table 9), they are reported in discounted terms for each year in table 10. As previously discussed, costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

Option 4: Require all components of option 3 (no outer packagers, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) but do not require persons that are required to establish and maintain records on food to establish and maintain records on the food's outer packaging.

FDA is unable to distinguish between the costs incurred when these persons are required to keep records on the food's outer packaging and when they are not required to keep such records. Persons required to establish and maintain records on foods will also keep records on the food contact substances they use because these substances meet the definition of food. Moreover, we believe that a large portion of outer packaging materials used by persons required to establish records is shipped to that person along with food contact substances. Consequently, persons keeping records on food contact substances are also likely to keep records on the food's outer packaging under current recordkeeping practices. As a result, the cost savings from exempting recordkeeping on outer packaging are assumed to be negligible and the costs of this option are assumed to be the same as option 3. We request comments on this assumption.

Tables 9 and 10 present the range and discounted cost estimates for options 3 and 4.

TABLE 9: TOTAL ANNUAL COSTS, OPTIONS 3 AND 4

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$400,491,000	$318,274,000	$404,529,000	$417
Year 2	$711,860,000	$566,254,000	$738,803,000	$741
Year 3 and later years	$334,682,000	$279,074,000	$334,079,000	$348

TABLE 10.—DISCOUNTED ANNUAL COSTS OF OPTIONS 3 AND 4

Year 1	$400,491,000
Year 2	$665,290,000
Year 3	$292,324,000
Year 4	$273,200,000
Year 5	$255,327,000
Year 6	$238,624,000
:[1]	:
:	:
Year 15	$129,795,000
:	:
:	:
Year 30	$47,044,000
:	:
:	:
Present Value as of Year 1	$5,534,165,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 5: Require all components of option 4, but change the required records access time to 24 hours.

All costs for this option will be identical to those for option 4 except for the access costs for records detailed in that section. As mentioned previously, FDA believes that 24 hours is the least amount of time allowable that would not cause any firms to need to plan for a rapid response or change their business practices. While the average access time for FDA traceback investigations is 2–3 days, we believe the same information could be provided in 1 day with the types of recordkeeping systems currently in use, including automated recordkeeping technology, and offsite storage and paper retrieval. Therefore, the difference between the cost of a 2–3 day response time and a 1-day response time is assumed to be negligible. However, the shorter response time requirements of 4 hours or 8 hours would likely impose a new burden on a number of firms. Therefore, we assume that the difference between 4 or 8 hours and 24 hours is the difference between having to preplan a response and being able to react with normal personnel in an emergency capacity. In order to estimate this cost difference, FDA assumes that no firm would incur extra planning costs detailed in option 2, and requests comments on this assumption. The marginal cost savings of extending the records access time requirement is approximately $715,355,000.

Table 11 of this document presents the range of undiscounted costs of future compliance and Table 12 of this document presents the discounted annual costs incurred in all future years and the present value of total costs incurred for option 5. In addition, Table 12 reports the marginal savings of option 5 with respect to option 4 as well as the discounted annual costs and the present value of total costs. The marginal savings of option 5 with respect to option 4 reflect the cost savings realized from relaxing the records access requirements from 4 and 8 hours in option 4 to 24 hours in option 5. As discussed earlier in this document, discounted computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 11.—TOTAL ANNUAL COSTS, OPTION 5

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$338,594,000	$288,569,000	$387,887,000	$387
Year 2	$567,921,000	$481,993,000	$659,106,000	$649
Year 3 and later years	$295,813,000	$258,715,000	$326,509,000	$338

TABLE 12.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 5

	Discounted Annual Costs of Option 5	Marginal Savings of Option 5 With Respect to Option 4
Year 1	$338,594,000	$61,897,000
Year 2	$530,767,000	$134,523,000
Year 3	$258,375,000	$33,949,000
Year 4	$241,472,000	$31,728,000
Year 5	$225,675,000	$29,652,000
Year 6	$210,911,000	$27,713,000
:[1]	:	:
:	:	:

TABLE 12.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 5—Continued

	Discounted Annual Costs of Option 5	Marginal Savings of Option 5 With Respect to Option 4
Year 15	$114,722,000	$15,073,000
:	:	:
:	:	:
Year 30	$41,580,000	$5,464,000
:	:	:
:	:	:
Present Value	$4,818,810,000	$715,355,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 6: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except intrastate facilities are excluded.

In the datasets used for this analysis, it is difficult to distinguish between interstate and intrastate facilities. In order to be considered only engaged in intrastate commerce, a food or food packaging facility must obtain all its ingredients and sell its entire product within a single state. Since all food and food ingredients are regulated in a similar manner, even one ingredient in a food not obtained from within a particular state would make the food facility involved in interstate commerce. None of these datasets distinguishes facilities based on interstate or intrastate commerce. It is reasonable to assume, however, that intrastate facilities will be very small and are unlikely to be retailers or transporters.

The FACTS database of currently regulated facilities contains 71,781 facilities possibly engaged in manufacturing, warehousing, and wholesale marketing of foods. Since the FACTS database gives a count of facilities that FDA inspects, this would estimate the total number of manufacturing, warehousing, and wholesale marketing facilities that are engaged in interstate commerce. The count of covered facilities of these types obtained from the CBP and non-employer statistics and presented in table 1, is 139,121 and includes both intrastate and interstate facilities. We estimate the number of intrastate facilities engaged in manufacturing, warehousing, and wholesale marketing by subtracting the number of facilities in FACTS from the number of corresponding facilities reported in table 1. The FACTS database does not track food packaging producers and distributors, so we assume that the ratio of intrastate to total packaging facilities is the same as that of the facility types (48.3 percent) that are tracked by FACTS. This estimate may underestimate the intrastate facilities by the number of mixed-type facilities that engage in farming and other facility types engaged in only intrastate commerce. For the firm estimates, we assume one firm per facility for the facilities not counted in the FACTS data; intrastate firms are likely to be very small, and the average number of facilities to firms for small firms in the Census datasets is almost exactly 1.

Table 13 of this document presents the effects of excluding these intrastate firms on the number of facilities affected, and Tables 14 and 15 of this document present the range of undiscounted costs and the discounted annual costs, present value of total costs, and marginal savings of option 6 with respect to option 4.

TABLE 13.—NUMBER OF FACILITIES AND FIRMS AFFECTED, OPTION 6

Type	Facility Estimate	Firm Estimate
Manufacturers	34,437	28,009
Wholesalers/Warehouses	37,434	30,189
Packaging[1]	17,840	16,741
Transporters/Packers	16,773	15,171
Retail Grocery and Specialty Food	207,657	153,277
Convenience Stores	128,985	68,866
Mixed-Type Facilities that Engage in Farming	30,497	24,397
Importers	18,902	15,122
Total Domestic	492,525	351,772
Foreign		

TABLE 13.—NUMBER OF FACILITIES AND FIRMS AFFECTED, OPTION 6—Continued

Type	Facility Estimate	Firm Estimate
Final Holders	77,427	61,942
Manufacturers	125,450	107,222
Other Facility Types	423,348	338,678
Total Foreign	626,225	507,842

[1] Includes both outer packaging and food contact substances.

TABLE 14.—TOTAL ANNUAL COSTS, OPTION 6

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$376,263,000	$358,454,000	$397,619,000	$424
Year 2	$648,418,000	$583,071,000	$720,849,000	$731
Year 3 and later years	$307,485,000	$286,089,000	$317,845,000	$347

TABLE 15.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 6

	Discounted Annual Costs of Option 6	Marginal Savings of Option 6 With Respect to Option 4
Year 1	$376,263,000	$24,228,000
Year 2	$605,998,000	$59,292,000
Year 3	$268,569,000	$23,755,000
Year 4	$250,999,000	$22,201,000
Year 5	$234,579,000	$20,748,000
Year 6	$219,233,000	$19,391,000
:[1]	:	:
:	:	:
Year 15	$119,248,000	$10,547,000
:	:	:
:	:	:
Year 30	$43,221,000	$3,823,000
:	:	:
:	:	:
Present Value as of Year 1	$5,087,535,000	$446,630,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 7: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except persons who operate mixed-type facilities that engage in farming are excluded.

This option would exempt from recordkeeping requirements all persons who operate mixed-type facilities that engage in farming. The total number of mixed-type facilities that would be exempt under this option is estimated to be 30,497, and the estimated numbers of such facilities by commodity type are reported in table 2. Tables 16 and 17 of this document summarize the estimated range and impact of this exemption on total costs and marginal savings into the future.

TABLE 16.—TOTAL ANNUAL COSTS, OPTION 7

	Mean	Low	High	Average Cost per Firm
Year 1	$379,977,000	$354,015,000	$406,264,000	$406
Year 2	$689,275,000	$619,484,000	$771,484,000	$736
Year 3 and later years	$322,701,000	$309,635,000	$337,022,000	$345

TABLE 17.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 7

	Discounted Annual Costs of Option 7	Marginal Savings of Option 7 With Respect to Option 4
Year 1	$379,977,000	$20,514,000
Year 2	$644,182,000	$21,108,000
Year 3	$281,860,000	$10,464,000
Year 4	$263,420,000	$9,780,000
Year 5	$246,187,000	$9,140,000
Year 6	$230,081,000	$8,543,000
:[1]	:	:
:	:	:
Year 15	$125,149,000	$4,646,000
:	:	:
:	:	:
Year 30	$45,360,000	$1,684,000
:	:	:
:	:	:
Present Value	$5,332,584,000	$201,581,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

We believe that there is an even smaller number of mixed-type facilities that have restaurants. We have assumed that the costs and marginal savings for these facilities would be negligible. We invite comment and information relating to this assumption.

Options 8 and 9: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) but change required records-retention times for perishables and all other foods to 1 year (option 8), and 2 years (option 9).

FDA believes that the 1-year record retention requirement for perishable foods not intended for processing into nonperishable foods and the 2-year record retention requirement for all other food products is well within industry norms (see the discussion of evidence supporting provided in a previous section of this document). We do not have enough information to quantify any marginal change in the cost of record storage under a universal 1-year required storage time (option 8) or a universal 2-year required storage time (option 9). All other things equal, FDA assumes that option 8 would be less costly than option 4, which in turn would be less costly than option 9. Because evidence suggests that most firms keep records for 2 years or more, FDA also believes that the marginal difference in storage costs between all of these options is smaller than the marginal difference in cost between other options we consider in this analysis. Therefore, while there may be a benefit from simplifying requirements by requiring the same storage time for both perishable and nonperishable foods, because the increased benefit is negligible, we assume that the marginal cost is zero for both options 8 and 9. We explicitly specify these options principally to request comments, including specific examples where required record retention times may have a large impact on cost.

Option 10: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) but cover only those foreign facilities also covered by FDA's proposed registration regulation published at 68 FR 5378, February 3, 2003.

The proposed registration regulation (68 FR 5378, February 3, 2003) would require certain foreign facilities that manufacture, process, pack, and hold food for consumption in the United States to register. Therefore, a useful alternative to explore may be to cover the same facilities in both regulations. This exclusion implies that these

regulations would not cover most of the category ''Other Facility Types'' in the last row of Table 1 of this document. Only facilities that do de minimis processing or packaging of food, such as affixing a label, are included in this option from the category of ''Other Facility Types''. Because the minimal degree of processing that de minimis processing facilities perform, they are not included in the OASIS count of foreign manufacturers.

We assume that domestic packers and repackers are the domestic counterpart to foreign de minimis food processing facilities. This seems reasonable since the amount of processing performed by packers and repackers is minimal. To estimate the number of foreign packers and repackers, FDA takes the number of packers and repackers in the FACTS database, 6,204, and adjusts it by the ratio of foreign manufacturers in OASIS to the number of domestic manufacturers in FACTS. This adjustment of 3.64 (125,450 foreign facilities divided by 34,437 domestic facilities), estimates the total number of foreign packers and repackers (or foreign de minimis processing facilities) as 22,600. The facilities-to-firms adjustment factor of 1.25, used to compute the number of firms in the ''Other Facility Types'' category, indicated that 18,080 firms were included in the foreign de minimis category. Table 18 reports the numbers of facilities and firms that were used in the cost estimates. FDA requests comments on these estimates.

TABLE 18.—NUMBER OF FACILITIES AND FIRMS AFFECTED. OPTION 10

Type	Facility Estimate	Facility to Firm Adjust. Factor	Firm Estimate
Domestic			
Manufacturers	43,376	1.17	36,948
Wholesalers/Warehouses	95,745	1.24	76,952
Packaging[1]	36,907	1.07	34,633
Transporters/Packers	16,773	1.11	15,171
Retail Grocery and Specialty Food	207,657	1.35	153,277
Convenience Stores	128,985	1.87	68,866
Mixed-Type Facilities that Engage in Farming	30,497	1.25	24,397
Importers	18,902	1.25	15,122
Total Domestic	578,842		425,366
Foreign			
Final Holders	77,427	1.25	61,942
De minimus Processors/Packagers	22,600	1.25	18,080
Manufacturers	125,450	1.17	106,858
Other Facility Types	0	0	0
Total Foreign	225,477		186,879

[1] Includes both outer packaging and food contact substances.

Since ''Other Facility Types'' is such a large and uncertain category, the exclusion of most of the category has a significant impact on all cost estimates.

The estimated ranges of the costs for learning, records access planning, additional records maintenance, and records redesign, as well as the total for this option are reported in table 19. The costs reported in the table are identified by the applicable Code of Federal Regulations (CFR) section and are expressed in present value terms to account for the fact that some costs are one-time costs while others are recurring costs. The cost estimate that is greater than 95 percent of all other estimates generated by the model is reported as the high value. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low value.

TABLE 19.—COST DESCRIPTION IN PRESENT VALUE TERMS: OPTION 10

21 CFR Section	Mean	Low	High
1.337, 1.345, and 1.352, (Learning)	$138,357,000	$134,017,000	$142,346,000
1.337, 1.345, and 1.352, (Redesign)	$381,292,000	$326,799,000	$430,439,000
1.361 (Access Planning)	$78,834,000	$73,176,000	$84,179,000

TABLE 19.—COST DESCRIPTION IN PRESENT VALUE TERMS: OPTION 10—Continued

21 CFR Section	Mean	Low	High
1.337, 1.345, and 1.352 (Additional Records Maintenance)	$2,952,309,000	$2,817,570,000	$3,070,891,000
1.337, 1.345, and 1.352, (Learning for New Firms)	$13,836,000	$13,310,000	$14,328,000
1.361 (Access Preparation for New Firms)	$7,883,000	$7,318,000	$8,418,000
Total[1]	$3,660,808,000	$3,478,944,000	$3,833,452,000

[1] The totals reported at the bottom of each column differ slightly from the results that would be obtained by adding together all of the cells in the column. This is because the computation of the totals reported here is made assuming a joint distribution of the cost components, as described elsewhere in the analysis, rather then by adding together the individually computed component costs.

The annual range and discounted costs for option 10 as well as the marginal savings of option 10 with respect to option 4 are detailed in tables 20 and 21 of this document. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 20.—TOTAL ANNUAL COSTS, OPTION 10

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$234,425,000	$215,030,000	$252,196,000	$383
Year 2	$507,230,000	$459,345,000	$550,801,000	$828
Year 3 and later years	$221,130,000	$212,313,000	$229,680,000	$361

TABLE 21.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 10

	Discounted Annual Costs: Option 10	Marginal Savings of Option 10 With Respect to Option 4
Year 1	$234,425,000	$166,066,000
Year 2	$474,047,000	$191,243,000
Year 3	$193,144,000	$99,180,000
Year 4	$180,508,000	$92,692,000
Year 5	$168,699,000	$86,628,000
Year 6	$157,663,000	$80,961,000
:[1]	:	:
:	:	:
Year 15	$85,758,000	$44,037,000
:	:	:
:	:	:
Year 30	$31,083,000	$15,961,000
:	:	:
:	:	:
Present Value as of Year 1	$3,660,808,000	$1,873,357,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 11: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except foreign coverage includes only facilities that are the final holders of the product before export to the United States.

We estimate that there would be approximately 62,000 foreign facilities covered under this option. We assumed that the number of foreign final holding facilities is equivalent to the number of domestic importers. Since foreign manufacturing facilities and foreign de minimus processors/packagers would be excluded from recordkeeping requirements, the coverage under this option is more limited than the coverage under option 10. The rationale for specifying this option is that final holders may be the most accessible foreign facilities in the event of an FDA traceback investigation. In addition, foreign final holders may be particularly at risk at this level in the food chain if the food is clearly identified as destined for consumption in the United States.

Tables 22 and 23 of this document present the cost estimates for option 11. As previously discussed, discount computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $182,429,000 reported in Table 22 of this document), they are reported in discounted terms for each year in Table 23 of this document to account for the fact that a dollar in 5 years, for example, is worth less than a dollar today. Each cell that contains only the symbol '':'' is meant to convey the continuation of the series depicted in the cells that precede it from above. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 22.—TOTAL ANNUAL COSTS, OPTION 11

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$172,973,000	$156,033,000	$190,831,000	$355
Year 2	$413,484,000	$369,335,000	$458,871,000	$849
Year 3 and later years	$182,429,000	$174,474,000	$190,610,000	$374

TABLE 23.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 11

	Discounted Annual Costs: Option 11	Marginal Savings of Option 11 With Respect to Option 4
Year 1	$172,973,000	$227,518,000
Year 2	$386,434,000	$278,856,000
Year 3	$159,341,000	$132,983,000
Year 4	$148,916,000	$124,284,000
Year 5	$139,174,000	$116,153,000
Year 6	$130,069,000	$108,555,000
:[1]	:	:
:	:	:
Year 15	$70,749,000	$59,046,000
:	:	:
:	:	:
Year 30	$25,643,000	$21,401,000
:	:	:
:	:	:
Present Value as of Year 1	$2,995,041,000	$2,539,124,000

[1] Each cell that contains only the symbol '':'' is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 12: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except all foreign food facilities are excluded.

This option excludes all foreign firms from recordkeeping requirements and has even less coverage than under option 11. Tables 24 and 25 of this document present the cost estimates. As previously discussed, discount computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $162,228,000 reported in Table 24), they are reported in discounted terms for each year in Table 25 of this document. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 24.—TOTAL ANNUAL COSTS, OPTION 12

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$139,947,000	$125,857,000	$152,775,000	$329
Year 2	$376,310,000	$334,230,000	$421,832,000	$885
Year 3 and later years	$162,228,000	$155,337,000	$169,446,000	$381

TABLE 25.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 12

	Discounted Annual Costs: Option 12	Marginal Savings of Option 12 With Respect to Option 4
Year 1	$139,947,000	$260,544,000
Year 2	$351,692,000	$313,598,000
Year 3	$141,696,000	$150,628,000
Year 4	$132,426,000	$140,774,000
Year 5	$123,763,000	$131,564,000
Year 6	$115,666,000	$122,958,000
:[1]	:	:
:	:	:
Year 15	$62,915,000	$66,880,000
:	:	:
:	:	:
Year 30	$22,803,000	$24,241,000
:	:	:
:	:	:
Present Value as of Year 1	$2,657,566,000	$2,876,599,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 13: Facilities must be able to tie specific input ingredients to specific products.

Most comments FDA received during its early outreach efforts for this proposed rule stated that tying specific raw input ingredients to specific finished products would significantly increase the burden on industry, which would translate into large social costs. Some comments suggested that some facilities have systems in place that can link each lot of raw ingredient to each lot of finished product, but such systems are rare for bulk agricultural commodities. For example, it is common practice in handling agricultural commodities to commingle raw ingredients from several suppliers in a large silo or storage tank. While this business practice would not be required to change under options 2–12, option 13 would add the significant new burden of requiring firms that traditionally commingle raw ingredients from several suppliers to redesign a production or storage strategy that would allow them

to identify more precisely the source of all the food products.

Most agricultural crops are traded as bulk commodities; bulk trading operates on the premise that crops produced by different farmers are sufficiently similar to be traded at a common price and with a common grading specification. For various reasons, some firms have put in place identity preservation systems, which they use to track individual lots of products throughout production and distribution. These identity preservations systems exist for organic products, kosher products, and some specialty versions of bulk products. FDA estimated the potential impact of this option by reviewing studies of current identity preservation systems. We assume that the identity preservation systems put in place for specialty versions of traditionally commingled products closely resembles what would be required to comply with the input-to-output requirement of this option. The study we rely on for our estimates (Ref. 17) is for corn and soybeans, the largest crops by value in the United States, but the issues should be similar for other types of bulk products.

The cost of identity preservation consists of: (1) The cost of segregating crops to prevent commingling, and (2) the cost of tracking ingredients. First, commodity suppliers should incur an increase in cost due to their inability to mix commodities in bulk. The Bender et al (Ref. 16) study estimates costs based on responses to a small survey of specialty elevators, grain firms, seed companies, and brokers. On average, 35 percent of the volume handled by these firms is specialty product, so they have ample experience in identifying cost differences, including storage, handling and segregation, risk management, transportation, analysis and testing, and marketing costs. Of the 84 survey responses, 55 estimated the cost of segregating and handling specialty crops. FDA used the overall average across facility types to estimate an average cost premium to be applied to each preprocessed commodity: $0.17 per bushel for corn and $0.48 per bushel for soybeans. The original estimate included a premium paid to farmers, but we subtracted this amount out of the total. Since option 13 would only require the identification of a particular immediate previous source, in this case a farm, we assume no new farming activity would have to take place. At an average price of $1.81 per bushel for corn and $4.60 per bushel for soybeans in 1999 (Ref. 18), the premium estimated for corn is 9.4 percent and for soybeans is 10.4 percent. Due to the small sample, standard errors were not reported in this study, but considerable nonquantified uncertainty exists around these estimates. These estimates may be an overestimate of premiums if economies of scale are possible in identity preservations systems. These estimates may be an underestimate if the reason these specialty product systems exist is that it is easier to preserve identities for corn and soybeans than for other products.

Table 26 of this document presents the calculations of the cost based on these segregation premiums. We apply the premium to the 1999 farm value of commodities, not to the retail values as retail prices include many other aspects of branding and bringing the product to market. These are also the latest data available, and since agricultural prices have been fairly stable, we do not adjust these dollar amounts to 2002. The estimated corn premium from the studies is used for all other bulk grain products, and the estimated soybean premium is also used for nuts, sugarcane and beets, sunflowers, and flaxseeds. Milk is assumed to have a lower cost increase; most milk production is local and already includes a tracking system to allow for the use of expiration dates for the final product. Vegetables destined for final consumption in an unaltered state, vegetables used for production, and eggs are also assumed to have a lower cost of tracking since current commingling practices for these products are limited. The table includes nuts, but we were unable to find a satisfactory price estimate. FDA requests comments on these assumptions.

TABLE 26.—COMMINGLING COSTS BASED ON SPECIALTY PREMIUMS, OPTION 13

Food Type	Count	Unit	$ Farm gate	Premium %	Premium $
Corn (for grain)	9,430,612,000	bushels	$17,103,991,000	9.4%	$1,603,204,000
Soybeans	2,653,758,000	bushels	$12,205,352,000	10.4%	$1,273,804,000
Milk	162,716,000,000	pounds	$23,400,050,000	5.0%	$1,170,003,000
Wheat	2,299,010,000	bushels	$5,593,989,000	9.4%	$524,340,000
Fruits	31,152,000	tons	$9,345,600,000	5.0%	$467,280,000
Fresh Vegetables	22,484,150	tons	$7,610,780,000	5.0%	$380,539,000
Eggs	82,715,000,000	eggs	$4,321,859,000	5.0%	$216,093,000
Sugar beets	33,420,000	tons	$1,242,898,000	10.4%	$129,714,000
Rice	20,602,700,000	pounds	$1,231,207,000	9.4%	$115,404,000
Peanuts	3,829,490,000	pounds	$971,608,000	10.4%	$101,401,000
Sugarcane	35,299,000	tons	$941,791,000	10.4%	$98,290,000
Sorghum	595,166,000	bushels	$937,406,000	9.4%	$87,866,000
Prod. Vegetables	15,476,230	tons	$1,660,051,000	5.0%	$83,003,000
Barley	280,292,000	bushels	$597,038,000	9.4%	$55,962,000
Sunflower	4,341,862,000	pounds	$339,993,000	10.4%	$35,483,000

TABLE 26.—COMMINGLING COSTS BASED ON SPECIALTY PREMIUMS, OPTION 13—Continued

Food Type	Count	Unit	$ Farm gate	Premium %	Premium $
Oats	146,193,000	bushels	$175,172,000	9.4%	$16,419,000
Honey	205,250,000	pounds	$126,075,000	5.0%	$6,304,000
Flaxseed	7,864,000	bushels	$30,098,000	10.4%	$3,141,000
Rye	11,038,000	bushels	$25,084,000	9.4%	$2,351,000
Nuts	1,295,700,000	pounds	$0	5.0%	$0
Total			$87,860,042,000		$6,370,601,000

As the second component of cost, FDA assumes that manufacturers using bulk production processes would have to adopt a new tracking system for their input ingredients. Having identity-preserved input ingredients delivered from their suppliers would help in this task, but the disruption to production practices could be substantial. FDA does not have an estimate of the percentage of producers that may be affected by this option, or the amount of change in production practices that would have to take place, but we assume that a useful lower bound of the increase in production cost would be the increase in information design and collection costs that manufacturers would face in this system.

For redesign costs, FDA used the Labeling Cost Model, assuming a full new document design as opposed to simple addition of information. FDA also assumed a doubling of information collection burden for manufacturers when compared to other options; they would have to track three sets of records (input sources, output sources, and input to output tracking) instead of two, but could not share the information collection burden with others in the production chain for these manufacturing records. As in the other options, we assumed the design costs would be incurred at the firm level and the additional records maintenance costs would be incurred at the facility level. FDA considers these design and records maintenance costs a probable underestimate of the total cost of disruption in manufacturing possible under this option, since it does not consider production process changes or additional tracking costs required in the post-production distribution chain. Table 26 of this document summarizes the redesign and additional records maintenance burden calculations unique to option 13.

TABLE 27.—ADDITIONAL REDESIGN AND RECORDS MAINTENANCE COSTS, OPTION 13.

	Count	Medium	Low	High
Redesign				
Domestic Manufacturing Firms	36,948	$228,816,000	$171,917,000	$413,738,000
Foreign Manufacturing Firms	72,770	$450,666,000	$338,600,000	$814,880,000
Total	109,718	$679,482,000	$510,517,000	$1,228,618,000
Additional Records Maintenance				
Domestic Manufacturing Facilities	43,376	$14,154,000		
Foreign Manufacturing Facilities	85,431	$27,876,000		
Total	128,807	$42,030,000		

Tables 28 and 29 of this document present the estimated range and impact of option 13 on total costs into the future. As the tables indicate, option 13 is much costlier than any of the other regulatory options. The numbers in parentheses in the right hand column of Table 29 reflect a negative marginal cost savings of option 13 with respect to option 4. As previously discussed, discount computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $6,743,086,000 reported in Table 28), they are reported in discounted terms for each year in Table 29 to account for the fact that a dollar in 5 years, for example, is worth less than a dollar today. Each cell that contains only the symbol ''::'' is meant to convey the continuation of the series depicted in the cells that precede it from above. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 28.—ANNUAL TOTAL COSTS, OPTION 13

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$442,970,000	$405,800,000	$484,402,000	$445
Year 2	$2,692,790,000	$2,504,068,000	$2,921,375,000	$2,706
Year 3 and later years	$6,743,086,000	$6,702,239,000	$6,726,422,000	$6,748

TABLE 29.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 13 (NUMBERS IN PARENTHESES ARE NEGATIVE)

	Discounted Annual Costs: Option 13	Marginal Savings of Option 13 With Respect to Option 4
Year 1	$442,970,000	($183,745,000)
Year 2	$2,516,626,000	($1,901,433,000)
Year 3	$5,889,672,000	($5,630,368,000)
Year 4	$5,504,367,000	($5,262,026,000)
Year 5	$5,144,268,000	($4,917,781,000)
Year 6	$4,807,727,000	($4,596,057,000)
:[1]	:	:
:	:	:
Year 15	$2,615,085,000	($2,499,951,000)
:	:	:
:	:	:
Year 30	$947,827,000	($906,097,000)
:	:	:
:	:	:
Present Value as of Year 1	$92,987,447,000	($88,149,370,000)

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Marginal analysis: As a way of comparing the options, Table 30 of this document presents the present values of total costs and the marginal savings of each option compared with option 4. Option 4 was chosen for comparison since it differs by only one provision from almost all the other options considered in the analysis. The marginal savings for all options, except options 2 and 13, are either zero or positive reflecting either a lower total cost or equivalent total cost compared with option 4.

Since option 3 and options 5–12 involve a single modification of the requirements in option 4, the marginal savings expressed for each of those options reflects the cost savings from removing that requirement. Furthermore, while option 2 differs from option 4 by two provisions, rather than one provision (option 4 does not require persons that manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging to keep records and does not require persons that are required to keep records on foods to keep records on the food's outer packaging), the costs computed for both options are equivalent. As a result, there is no loss in meaning by comparing the costs of all options to option 4 in Table 30. Consequently, for option 10, the marginal savings in present value terms from relaxing the comprehensive foreign coverage requirement in option 4 to the reduced level of coverage specified by the registration rule is $1,873,357,000 as reported in the following table.

TABLE 30.—PRESENT VALUE AND MARGINAL SAVINGS WITH RESPECT TO OPTION 4

Option	Present Value of Total Cost	Marginal Savings With Respect to Option 4	Description of Option Requirements
2	$5,663,484,000	($129,319,000)[1]	Comprehensive coverage, 4 or 8 hour records-access requirement, 1 and 2-year records-retention requirement

TABLE 30.—PRESENT VALUE AND MARGINAL SAVINGS WITH RESPECT TO OPTION 4—Continued

Option	Present Value of Total Cost	Marginal Savings With Respect to Option 4	Description of Option Requirements
3	$5,534,165,000	$0	Exclude outer packagers
4	$5,534,165,000	$0	Exclude outer packagers and recordkeeping on outer packaging
5	$4,818,810,000	$715,355,000	Same as option 4 except records-access requirement is relaxed to 24 hours
6	$5,087,535,000	$446,630,000	Same as option 4 except intrastate facilities are excluded
7	$5,332,584,000	$201,581,000	Same as option 4 except mixed-type facilities that engage in farming are excluded
8	$5,534,165,000	$0	Same as option 4 except universal records retention of 1 year
9	$5,534,165,000	$0	Same as option 4 except universal records retention of 2 years
10	$3,660,808,000	$1,873,357,000	Proposed. Same as option 4 but limit foreign coverage to be the same as registration.
11	$2,995,041,000	$2,539,124,000	Same as option 4 but limit foreign coverage to the final holders prior to export.
12	$2,657,566,000	$2,876,599,000	Same as option 4 except all foreign facilities are excluded.
13	$93,137,167,000	($87,603,002,000)[1]	Comprehensive coverage. Precise input to output recordkeeping requirement.

[1] Numbers in parentheses are negative.

Sensitivity of cost estimates to assumptions: For all the options, FDA attempted to quantify the uncertainty associated with redesign costs and the number firms and facilities exclusively dedicated to imports, but we had no basis for assigning distributions to other uncertain components. By far the largest source of uncertainty is the premium on products that would be subject to new identity preservation under option 13. FDA also tested the sensitivity of other sources of uncertainty under option 10, in order for the reader to compare various sources of uncertainty and submit comments regarding our assumptions. Although the dollar sensitivities to the assumptions specified in Table 31 of this document should be similar across the options, many of the percentage sensitivities would—because of different base costs—differ under other options. FDA believes that the ranking of the costs of these options is not affected by any uncertainty in our estimates.

There is significant uncertainty in the estimate of the number of mixed-type facilities that engage in farming. Based on research described earlier, our estimate of the number of mixed-type facilities that engage in farming that would be covered by this proposed rule is 30,497. To determine the sensitivity of the cost estimates to changes in the numbers of mixed-type facilities that engage in farming, a sensitivity analysis was performed in which the number of these types of facilities was increased by 10 percent.

Table 31 of this document presents the results of the sensitivity analyses that we conducted. For option 13, Table 31 reports the effect of an increase in crop premium for identity preservation of 1 percent for all crops. For option 10, Table 31 reports the effect of a 10 percent increase in the estimate of the number of mixed-type facilities that engage in farming, and 10 percent cost increases for each component cost on the mean first-year total cost estimates. For redesign costs, we assumed a 10 percent increase in the medium cost estimate.

Finally, to be consistent with the analysis conducted for the Registration proposed rule, a sensitivity analysis was conducted that accounted for the possibility that a number of foreign firms would cease to export to the United States because of the burden imposed by these regulations. This is particularly relevant when considering the burden imposed on foreign firms by the Registration proposed rule. In the analysis of the registration proposed rule, it was estimated that approximately 16 percent of small manufacturers and processors (defined in that analysis as those exporting 10 or fewer line items to the United States) would cease exporting to the United States because of the increase in costs due to that proposed rule. Consistent with the analysis of the Registration proposed rule, we analyzed the cost sensitivity of a 16 percent reduction in the number of foreign firms. FDA requests comments on other desired sensitivity analyses.

TABLE 31.—SENSITIVITY ANALYSIS

Test	Option	Effect on Present Value Mean Cost ($)	Percent Effect
10% increase in records maintenance	10	$276,513,000	7.02%
10% increase mixed-type facilities that engage in farming	10	$17,061,000	0.46%
10% decrease in percent European	10	$33,529,000	0.91%
10% increase in redesign	10	$38,006,000	1.03%
10% increase in learning	10	$32,185,000	0.87%
10% increase in access	10	$18,873,000	0.51%
16% decrease in number of foreign firms	10	($138,484,000)[1]	(3.93%)[1]
1% increase in identity preservation premium	13	$490,117,000	0.52%

[1] Numbers in parentheses are negative.

Benefits: These options would improve FDA's ability to address adulterated food and food packaging that presents a threat of serious adverse health consequences or death to humans and animals. FDA is unable to quantify the benefits of these regulations, though we consider them substantial. While the probability of a deliberate contamination of the food supply may be low, the potential cost of a deliberate contamination of the food supply may be high. Below we present some examples to demonstrate what such a contamination may look like. Without having any hypothesis on the likelihood of a deliberate contamination, it is impossible to quantitatively measure the benefits of the reduced impact due to each of these regulatory options.

Further hindering any quantification of benefits is the interactive effect of other regulations that are being developed to implement Title III of the Bioterrorism Act of 2002. The registration (section 305 of the Bioterrorism Act) and recordkeeping regulations would work cooperatively to identify and track possible sources of an outbreak. The prior notice for imported shipments (section 307 of the Bioterrorism Act) would allow the agency time to identify possible sources of risk from adulterated food and its packaging that presents a threat of serious adverse health consequences or death to humans and animals, which could then be investigated with the aid of the new registration and recordkeeping regulations.

To understand possible costs of an intentional attack on the food supply, we examine five outbreaks resulting from accidental and deliberate contamination, and from both domestic and imported foods. It is possible that an intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens would be much larger. Also, intentional attacks may be fundamentally more difficult to trace than natural outbreaks due to deliberate obfuscation of the source and possible multiple contamination events of different food types and food facilities. We then examine mechanisms through which each regulatory option discussed in this analysis may act and analyze how each of the options affects the mechanisms.

TABLE 32.—SUMMARY OF FIVE FOODBORNE OUTBREAKS

Pathogen	Location and Year	Vehicle	Confirmed or Reported Cases	Estimated Number of Cases	Total Illness Cost (dollars)
Salmonella enteritidis	Minnesota 1994	Ice cream	150 cases; 30 hospitalized	29,100 in MN; 224,00 nationwide	3,187,744,000 to 5,629,792,000
Shigella sonnei	Michigan 1988	Tofu salad	3,175 cases	Not available	45,183,000 to 79,797,000
Outbreaks resulting from deliberate contamination					
Salmonella Typhimurium	Dalles, Oregon 1984	Salad bars	751 cases; 45 hospitalized	Not available	10,687,000 to 18,875,000
Shigella dysentreriae type 2	Texas 1996	Muffins and doughnuts	12 cases; 4 hospitalized	All cases identified	83,000
Outbreaks resulting from imported foods					
Cyclospora cayaetanensis	United States and Canada 1996	Raspberries (probably imported from Guatemala)	1465 cases identified, less than 20 hospitalized	Not available	3,941,000

Salmonella enteritidis in ice cream

In 1994, approximately 224,000 people were sickened by ice cream contaminated with *Salmonella enteritidis*. The source of the contamination appeared to be pasteurized premix that had been contaminated during transport in tanker trailers that carried nonpasteurized eggs. There were 150 confirmed cases of salmonellosis associated with the outbreak in Minnesota. However, ice cream processed during the contamination period was distributed to 48 states. To calculate the total number of illnesses associated with the outbreak, researchers calculated an attack rate of 6.6 percent. This attack rate was extrapolated to the population that consumed the ice cream, giving a total number sickened of 224,000 (Ref. 19).

Salmonellosis most commonly causes gastrointestinal symptoms. Almost 91 percent of cases are mild and cause 1 to 3 days of illness with symptoms including diarrhea, abdominal cramps, and fever. Moderate cases, defined as cases that require a trip to a physician, account for 8 percent of the cases. These cases typically have a duration of 2 to 12 days. Severe cases require hospitalization and last 11 to 21 days. In addition to causing gastroenteritis, salmonellosis also can cause reactive arthritis in a small percentage of cases. Reactive arthritis may be short or long term and is characterized by joint pain. Just over 1 percent of cases develop short-term reactive arthritis and 2 percent of cases develop chronic, reactive arthritis.

FDA estimated the costs associated with salmonellosis, including medical treatment costs and pain and suffering. Table 32 of this document provides a summary of these estimates. Pain and suffering is measured by lost quality adjusted life days (QALDs). QALDs measure the loss of utility associated with an illness. A QALD is measured between zero and one, with one being a day in perfect health. FDA uses the value placed by consumers on the risks to life found in current economic literature (See Refs. 20, 21, 22, and 23). In addition, FDA presents two estimates of values of pain and suffering associated with arithritis, one based on physician estimates (Ref. 24) and another based on a regression analysis approach (Ref. 25). This gives a range of costs for the average case of salmonellosis between $14,231 and $25,133.

To estimate the economic cost due to illness associated with this outbreak, FDA used the range for the average cost per case. For 224,000 people, this is a total cost of between $3,187,744,000 and $5,629,792,000 from this accidental food disaster.

TABLE 33.—THE COST OF A TYPICAL CASE OF SALMONELLOSIS

Severity	Case Breakdown (percent)	Total QALDs Lost per Illness	Health Loss (dollars) per Case (Discounted)	Medical Costs (dollars) per Case (Discounted)	Weighted Dollar Loss per Case
Illness					
Mild	90.7	1.05	660	0	599
Moderate	8.1	3.68	2,310	283	209
Severe	1.2	9.99	6,266	9,250	188
Arthritis					
Regression approach					
Short-term	1.26	5.41	3,391	100	44
Long-term	2.40	2,613.12	452,554	7,322	11,048
Direct survey approach					
Short-term	1.26	10.81	6,778	100	87
Long-term	2.40	5,223.15	904,573	7,322	21,906
Death	0.04		5,000,000		2,143
Total expected loss per case					
Regression approach					14,231
Direct survey approach					25,133

Shigella sonnei in tofu salad

In 1988, a tofu salad at an outdoor music festival was contaminated with Shigella sonnei and sickened an estimated 3,175 people. Over 2,000 volunteer food handlers served communal meals at the festival (Ref. 26). Shigellosis causes similar symptoms and is of similar duration to salmonellosis. It also is associated with short term and chronic reactive arthritis; thus FDA assumed the average case of shigellosis has the same cost as salmonellosis. This gives a total cost of $45,183,000 to $79,797,000.

Salmonella typhimirium in salad bars

During September and October of 1984, two outbreaks of *Salmonella* typhimirium occurred in association with salad bars in restaurants in The Dalles, Oregon. At least 751 people were affected. Members of the local Rajneeshpuram commune intentionally caused the outbreak by spraying *Salmonella* typhimirium on the salad bars in local restaurants. Their apparent motivation was to influence a local election by decreasing voter turnout. Intentional contamination was not suspected immediately and no charges were brought until a year after the attacks (Ref. 27).

The 751 people affected primarily were identified through passive surveillance; thus the true number of people actually sickened is undoubtedly much higher. The Dalles is located on Interstate 84 in Oregon and is a frequent stop for travelers who were unlikely to be identified by passive or active surveillance for salmonellosis. However, since we do not have any estimates of the true size of the outbreak, we estimated the costs associated with known cases, recognizing this is an underestimate of the true cost of the outbreak. We use the cost estimates for salmonellosis as ranging from $14,231 to $25,133. This gives an estimated cost

of known cases for the outbreak of $10,687,000 to $18,875,000.

Shigella dysenteriae type 2 among laboratory workers

Twelve people working in a laboratory who consumed muffins left in the laboratory break room contracted shigellosis. Affected workers had diarrhea, nausea, and abdominal discomfort. Investigators concluded that the outbreak likely was the result of deliberate contamination. All twelve affected workers were treated by, or consulted with, a physician. Nine affected workers went to the emergency room, four of whom were hospitalized (Ref. 28).

To estimate the cost of this outbreak, FDA assumed that the eight cases requiring consultation with a doctor, but not requiring hospitalization, had the same cost as a moderate case of salmonellosis. The four cases requiring hospitalization were estimated to have the same cost as a severe case of gastroenteritis resulting from salmonellosis. This gives a cost of $83,000 for illnesses associated with the event.

TABLE 34.—SUMMARY OF COSTS FOR CASES OF SHIGELLOSIS

Severity	Number of cases	Cost per case (dollars)	Total cost (dollars)
Mild	0	0	0
Moderate	8	2,593	21,000
Severe	4	15,516	62,000
Grand total			83,000

Cyclospora cayatanensis in imported raspberries

In 1996, 1,465 cases of cyclosporiasis were linked to consumption of raspberries imported from Guatemala. Nine hundred and seventy eight of these cases were laboratory confirmed. No deaths were confirmed and less than 20 hospitalizations were reported (Ref. 29). Case control studies indicated that raspberries imported from Guatemala were the source of the illnesses. Fifty-five clusters of cases were reported in 20 states, two Canadian provinces, and the District of Columbia (Ref. 30).

Cyclosporiasis typically causes watery diarrhea, loss of appetite, weight loss, and fatigue. Less common symptoms include fever, chills, nausea, and headache. The median duration of illness associated with the outbreak was more than 14 days and the median duration of diarrheal illness was 10 days (Ref. 30). We estimated the cost of a mild case of cyclosporiasis as two and a half times higher than the cost of a mild case of gastroenteritis from salmonellosis due to the longer duration. The reports of cyclosporiasis outbreaks did not include information on the number of physician visits. We assumed that the percentage of total cases that result in physician visits would be larger than the corresponding percentage for salmonellosis illnesses, due to the longer duration of illnesses. We assumed, therefore, that 40 percent of those infected with cyclosporiasis visited a physician. Less than 20 hospitalizations were reported from the cyclosporiasis outbreak (Ref. 29). No deaths were confirmed.

TABLE 35.—SUMMARY OF COSTS FOR CASES OF CYCLOSPORIASIS

Severity	Number of cases	Cost per case (dollars)	Total cost (dollars)
Mild	879	1,650	1,450,000
Moderate	586	3,748	2,196,000
Severe	19	15,516	295,000
Grand total			$3,941,000

Mechanisms: The new recordkeeping provisions we describe in the options section would not only help FDA determine the cause of a particular outbreak by tracing the source, they would also reduce further adverse health effects by enabling FDA to trace forward to locate adulterated food and its packaging that presents a threat of serious adverse health consequences or death to humans and animals. We expect that, working in concert with other regulations, having complete records identifying all links in the chain of custody for a particular product will allow FDA to more efficiently deploy its compliance and regulatory resources in an event of an outbreak. Having complete records increases the probabilities of FDA being able to trace back to the source of an outbreak and of FDA being able to trace forward to locate adulterated food and its packaging. FDA conducts approximately 20 emergency traceback investigations per year. Although no investigation has been completely halted by a lack of adequate records in the past several years, inadequate records have hindered investigations. For example, FDA attempted to conduct approximately 38 tracebacks in a Cyclospora outbreak in 1997. Of those, we were able to complete 33, and the majority of failures were due to the lack of available records. More commonly, incomplete records severely impede the ability of FDA to conduct effective investigations.

Faster required record access times may allow FDA to more rapidly identify the source of an outbreak and limit its effects. Over the past several years of FDA traceback investigations, the normal response time between a request for data and the receipt of the records from the firm is 2–3 days. The response times in these options would greatly speed up the traceback process, which would be critical in limiting a deliberate or accidental major outbreak.

Comparison of benefits under each option: Because we cannot quantify these benefits, we cannot differentiate the benefits of each option in dollar terms. Instead, we explore how effectively each of the two mechanisms, trace back and response, would operate under each of the options. The extent of coverage by each option is one criterion that we use to evaluate the effectiveness of each mechanism since the extent of coverage may influence the effectiveness of both trace-back and response times. Tables 36 and 37 of this document present the numbers of firms covered under each option, and the reduction in the numbers of firms covered under each option when compared to those covered under option 4. As in the costs section, option 4 was chosen for comparison purposes for the sake of consistency. Foreign and domestic coverage are presented separately in Tables 36 and 37 of this document since there may be reason to weigh the benefits from the inclusion of each category differently. Table 38 of this document provides a summary of the expected effects.

TABLE 36.—NUMBER OF FIRMS COVERED BY OPTION

Option	Domestic	Foreign	Total
2	459,998	535,432	995,431
3	425,365	449,676	875,041
4	425,365	449,676	875,041
5	425,365	449,676	875,041
6	351,772	449,676	801,448
7	400,968	449,676	850,644
8	425,365	449,676	875,041
9	425,365	449,676	875,041
10	425,365	186,879	612,245
11	425,365	61,942	487,307
12	425,365	0	425,365
13	459,998	535,432	995,431

TABLE 37.—MARGINAL REDUCTION IN THE NUMBERS OF FIRMS COVERED WITH RESPECT TO OPTION 4

Option	Domestic	Foreign	Total
2	(34,633)[1]	(85,756)[1]	(120,389)[1]
3	0	0	0
4	0	0	0
5	0	0	0
6	73,594	0	73,594
7	24,397	0	24,397
8	0	0	0
9	0	0	0
10	0	262,797	262,797
11	0	387,735	387,735
12	0	449,676	449,676
13	(34,633)[1]	(85,756)[1]	(120,389)[1]

[1] Numbers in parentheses are negative.

Evaluating the benefits by option using two mechanisms: (1) Complete records (which increase the probability of a thorough trace-back investigation), and (2) faster records access times (which may allow for more rapid identification of the source of an outbreak and limit its effects).

Option 1, no action: No impact.

Option 2, comprehensive coverage, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products: This option contains no exemptions, so it has the largest coverage of any of the options we consider and ranks high with regard to improving the ability to perform a thorough trace-back investigation. However, option 13 requires even greater additional record information collection, which would aid in trace-back investigations. So, based on mechanism 1, this option has the second highest benefits. With regard to the speed criterion—this option also has the quickest response time specified in any of the options. It is ranked second in overall benefits behind option 13.

Option 3, same as option 2 except outer-packaging manufacturers and distributors are excluded: The exclusion of outer food packagers from recordkeeping requirements reduces the coverage and the potential to perform a thorough trace-back investigation compared with option 2. It is also unclear what the relative risk of outer food packaging is compared with the risk of the food itself (including food contact substances), but FDA assumes that the potential harm through packaging adulteration, although serious, is lower than the potential harm through adulteration of food. This would tend to mitigate the consequences on potential trace-back capability from excluding these facilities. This option also scores relatively well if rated by the speed criterion since the records-access time is the same as in option 2. The exclusion of outer packaging manufacturers and distributors will not reduce benefits by much compared with option 2—especially because the risk of contamination through outer packaging is likely to be small.

Option 4, same as option 3 except recordkeeping on outer-packaging is excluded: The reduction in benefits from not requiring recordkeeping on outer food packaging is assumed to be negligible compared with option 3. Therefore, the benefits from this option are about the same as option 3 using both the complete records criterion and the speed criterion.

Option 5, same as option 4 except records access requirement is relaxed to 24 hours: This option does not differ much from option 4 by this ranking criterion, since it has the same domestic and foreign coverage and record scope requirements. However, this option scores relatively low by the speed criterion, since all other options would require a much faster response time for records access.

Option 6, same as option 4 except intrastate facilities are excluded: This option has lower benefits than many other options since it exempts the largest number of domestic facilities of any option. The relative ranking of options that offer exemptions will be affected by the total number of facilities exempted and the breadth of the supply chain these facilities cross. This intrastate exclusion would affect many different facility types throughout the supply chain, including approximately 91,383 domestic manufacturers, wholesalers, and warehouses. In addition, many facilities involved only in intrastate commerce handle food products that eventually will be introduced into interstate commerce farther along the supply chain. While intrastate facilities are likely to be small, if they are participants in the chain of custody of the food that causes a major outbreak, their exclusion could disrupt FDA's ability to identify the source of an outbreak and limit its effects. The overall ranking of this option is behind option 10.

Option 7, same as option 4 except mixed-type facilities that engage in farming are excluded: There are fewer exempted facilities in this option, owned by approximately 24,397 domestic firms, than in option 6. Furthermore, these exempt firms are mixed-type facilities that engage in farming and would be closer to the beginning of the chain of custody for food products. FDA considers this option to have lower benefits than option 5, since fewer facilities would be required to keep records that may be needed for a traceback investigation, but higher benefits than options 6 and 10–12, since fewer facilities would be exempt and especially since these facilities are closer to the beginning of the supply chain.

Option 8, same as option 4 except there is a universal records-retention requirement of 1 year for perishables and all other products: All other things being equal, the shorter the retention time for records, the more likely that those records would be missing when needed for a trace-back investigation. Most nonperishable products and perishable products that are processed into finished food products may be in the supply chain for longer than a year, but it is very likely that the effects of a contamination of nonperishable goods would be seen within a year of being introduced in the market. FDA considers this option to have higher benefits than options 6 and 7, and higher benefits than the other exemptions offered in options 10–12. Option 8 is ranked lower than option 9 because of the nonzero probability that a nonperishable food is adulterated and that adulteration is not discovered until more than a year after the event.

Option 9, same as option 4 except there is a universal records-retention requirement of 2 years for perishables and all other products: Once again, all other things being equal, the longer the record retention the better, so this option probably has more benefits than option 2. While option 9 has the benefit of simplicity in that there is only one retention requirement for all records, in practical terms the danger from a perishable good will be known soon after that good is consumed. Consequently, keeping records longer than one year for perishable goods that are consumed in an unaltered state would most likely exceed the time period of many tracing investigations. Therefore, based on the ability to conduct a thorough investigation, FDA ranks the benefits of this option as roughly equal to option 4, especially since the longer records-retention requirement should not affect the speed of an investigation.

Option 10, same as option 4 except that foreign coverage is the same as for the registration proposed rule: The proposed option would generate more benefits than other options that exempt foreign facilities. Since the foreign coverage is progressively lower for options 10, 11, and 12, the benefits also decrease for those options accordingly. However, the benefit from improved recordkeeping practices by a given set of facilities also depends on the amount of food produced by those facilities. Because imported food accounts for a small percentage of total domestic food consumption, the average amount of domestically consumed food from foreign facilities is smaller than that from domestic facilities. Under this option, the reduction in the number of foreign facilities that are covered is proportionally greater than the reduction in the amount of food covered. As a result, the incremental reduction in potential costs caused by the exemption of foreign facilities should be larger than the incremental reduction in benefits. The exemption of foreign facilities under this option

would likely hamper trace-back capability by less than an exemption of the same number of domestic facilities.

Moreover, option 10 has the added benefit of simplicity in that the foreign coverage would be the same as that covered under the registration rule. This parallel coverage to the registration rule would make monitoring both recordkeeping and registration practices less costly.

Option 11, same as option 4 except that foreign coverage includes only the final holders before export: In addition to the exemptions in option 10, this option exempts an additional single category in the middle of the foreign supply chain and with a large number of facilities. Consequently, the benefits under this option are lower than under option 10 by both the speed criterion and the thorough investigation criterion. However, as we explained in the discussion of option 10, the proportionally smaller importance of imported foods in the domestic food supply implies that the exemption should have relatively little effect on benefits.

Option 12, same as option 4 except that all foreign facilities are excluded: This option exempts all foreign suppliers from record-keeping requirements. When compared to options 10 and 11, the number of foreign firms covered under this option is the lowest. As such, the benefits of this option, when compared to the other two, are the lowest as well using both the speed criterion and the ability to conduct a thorough investigation.

Option 13, comprehensive coverage that requires facilities to be able to tie specific input ingredients to specific products: This option generates the highest benefits. A complete list of the specific source of all ingredients would be available for all processed and raw foods, greatly aiding traceback and trace forward investigations. In addtion, of all the options, this would allow investigators to most quickly identify candidate traceback facilities, since it would allow FDA to effectively narrow our search to specific entities.

Table 38 of this document presents the overall ranking of each option based on the previous summary. Option 13, requiring input ingredients to be connected to output ingredients through records, has the highest absolute benefits, followed by option 2. The lowest ranked option in terms of absolute benefits is the baseline, option 1, and the lowest benefits of the possible interventions would be the proposed rule with a complete foreign facility exemption, due to the large number of foreign facilities where adulteration might occur. FDA requests comments on this ranking.

TABLE 38.—RANKING OF EFFECTIVENESS OF EACH MECHANISM UNDER EACH OPTION

Option:	Benefit 1	Benefit 2	Overall Ranking
1) No action	13	13	13
2) 4 or 8 hour records access	2	2	2
3) Outer packaging exemption	3	3	3
4) Exclude recordkeeping on outer packaging	3	3	3
5) 24-hour records access	7	9	8
6) Intrastate exemption	10	10	10
7) Mixed-type facilities that engage in farming	5	5	5
8) 1-year record retention	7	7	7
9) 2-year record retention	6	6	6
10) Proposed. Same foreign coverage as Registration	8	8	8
11) Cover only final foreign holders	11	11	11
12) Exempt all foreign suppliers	12	12	12
13) Input to output requirement	1	1	1

B. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this proposed rule would have a significant economic impact on a substantial number of small entities.

Impact per firm: We define small as employing fewer than 500 full-time-equivalent workers. The SBA uses several criteria for identifying a small firm based on its NAICS code, but having less than 500 employees is the most common SBA small definition in the food industry (Ref. 31). We also consider two definitions of very small: Less than 20 employees and less than 10 employees. The great majority of firms are considered small when classified by any of these definitions. Table 39 presents the percent of firms in each of these categories. Not included in this table are farm numbers. We calculated farm percentages using the Agricultural census through the NASS, but the Agricultural census only classifies farm size by sales and acreage, not by the number of employees (Ref. 19). Fifty percent of farms have less than $10,000 in annual sales. Neither SBA definitions nor employee data exist for exclusive food importers; we assume that the percentage of small firms in this category is similar to the percentage in other food categories. We do not include foreign firms in this analysis because the Regulatory Flexibility Act does not

apply to foreign entities. It is clear from Table 39 of this document that any provision in this regulation that takes the size of the facility into account would cover a significant percent of food businesses.

TABLE 39.—PERCENTAGE OF SMALL AND VERY SMALL FIRMS

Type	< 500 Employees	< 20 Employees	< 10 Employees
Manufacturers	98.0%	85.3%	77.0%
Wholesalers/Warehouses	99.3%	89.4%	82.2%
Packaging[1]	98.6%	87.0%	78.7%
Transporter/Packers	99.5%	94.8%	89.5%
Grocery and other Retail	99.7%	93.9%	87.8%
Convenience Stores	99.6%	88.9%	73.1%
Mixed-Type Facilities that Have Farms	—	—	—
Importers	—	—	—

[1] Includes both outer packaging and food contact substances.

In Tables 40 and 41 of this document, FDA presents the average and maximum possible burden placed on each small and very small firm following the adoption of the final rule. We explain these costs in detail in the preliminary regulatory impact analysis. Costs fall into four categories: learning about the regulation, redesigning records to accommodate new information, collecting and maintaining new information, and planning for a rapid response in the event of a records request from FDA under this authority. The average mean startup costs reported in the table are approximately $888, and the average mean recurring costs reported in the table are approximately $222. Based on our assumptions, average maximum startup costs are approximately $2569 and the average maximum recurring costs reported in the table are $521. We also acknowledge considerable nonquantifiable uncertainty in these estimates, so the true burden of the regulation on small businesses could be higher or lower.

The estimated burden on convenience stores is lower since: (1) We assume that most convenience stores will depend on either a corporate parent or other facility in the supply chain for document redesign, and (2) only a small percentage of convenience stores sales (11.4 percent according to a comment received through FDA's early outreach) is for food products, so the volume of food products for which they would have to collect information and prepare access is relatively small. Transporters and Packing firm costs are larger since we assume that transporting firms would not be able to share records redesign costs with firms up or down the supply chain. We also assumed that packaging producers and distributors would have to maintain relatively less additional information since not all of their products will be used to pack food. In subsequent years, all firms will only incur the additional records maintenance burden.

TABLE 40.—AVERAGE STARTUP AND RECURRING COSTS PER FIRM

Cost	Transporter/ Packer	Convenience Store	Packaging[1]	Other
Startup				
Learning	$120	$120	$120	$120
Redesign	$1,211	$121	$606	$606
Access Preparation	$151	$75	$151	$151
Total Startup	$1,482	$317	$876	$876
Recurring				
Additional Records Maintenance	$326	$63	$163	$326

[1] Includes both outer packaging and food contact substances.

The maximum first year costs per firm are calculated using the following assumptions: First, a firm may not have Internet access, so it may have a 5 1/2 hour learning burden. Next, a firm may incur the largest value in the distribution of redesign costs, and may not be able to share the redesign burden with other facilities. Finally, the firm may not receive records with any additional information previously collected that is required in this proposed rule. Thus they may incur the entire burden of additional records maintenance. We assume access preparation costs do not vary.

TABLE 41.—MAXIMUM STARTUP AND RECURRING COSTS PER FIRM

Cost	Transporter/ Packer	Convenience Store	Packaging[1]	Other
Startup				
Learning	$138	$138	$138	$138
Redesign	$2,299	$2,299	$2,299	$2,299
Access Preparation	$151	$75	$151	$151
Total Startup	$2,588	$2,512	$2,588	$2,588
Recurring				
Additional Records Maintenance	$653	$126	$653	$653

[1] Includes both outer packaging and food contact substances.

In order to get a rough estimate of the impact of higher recordkeeping costs on small businesses, we ran the small business simulation model that was developed by FDA's contractor, RTI International (Ref. 31), for the candy and ready-to-eat food sectors. In the simulation, we used the high annual costs of the second year per-firm recordkeeping costs (about $850) to see the impact on revenues and cash flow. The results from the simulation indicate that when firm size (by number of employees) is assumed to be normally distributed, the recordkeeping costs in the second year would result in pre-tax costs being greater than cash flow for 0.1 percent of firms with fewer than 20 employees in the candy industry. For the ready-to-eat sector, the results indicate that the high second year per-firm recordkeeping costs would not result in pre-tax costs being greater than cash flow for any firms.

Additional flexibility considered: Agencies can consider three basic small business regulatory options: First, if the implementing statute allows, an agency could exempt small businesses from all regulatory requirements. In addition, an agency could modify the regulatory requirements for small businesses, including offering an exemption from part of the regulation. Finally, an agency could specify a longer effective compliance date for small businesses. In this proposed rule, FDA considers each of these possibilities. We designed several provisions to lower the impact on small firms, some of which apply to small firms exclusively, and some of which apply to all firms.

First, FDA proposes a staggered effective compliance date for this regulation. The compliance dates are the following: 6 months for large firms, 12 months for small firms, defined as having less than 500 but more than 10 full-time equivalent employees, and 18 months for very small firms, defined as having 10 or fewer full-time equivalent employees. Only one of the cost estimates we explained in detail in the preliminary regulatory impact analysis directly depends on the compliance date; records redesign cost. We estimated using the FDA Label Cost Model that very small firms would save an average of 10 percent in their redesign costs by having longer than a year to comply. The medium 1-year redesign cost estimate is $1,309 per redesign. We assume this cost is shared between two firms, since a single set of records can serve as source, recipient, and transport records. The average redesign cost per firm is $655 for firm types other than transporters and convenience stores. The median 18-month redesign cost estimate is $1,190 per redesign, for an average cost of $595 per firm. The estimated medium redesign burden would drop by $60 per firm, or 8 percent of the estimated average first startup burden of the regulation. Also, present value considerations will result in reduced future cost estimates. Thus, the later compliance dates specified in the proposed rule will reduce the total cost for all small firms. FDA requests comments regarding these assumptions.

In addition, FDA is proposing to describe the specific information a covered entity must keep, but not specify the form or type of system in which those records must be maintained, which will allow firms to comply with the regulation in a manner that is cost effective. Mandated structural changes to records or required retention technology probably would not be the most cost effective solution for every firm, so not specifying the form or type of system in which the records must be maintained almost certainly would impose a smaller burden on industry, including small businesses. Comments to FDA's preliminary outreach generally agreed with this position. FDA believes that describing the specific information a covered entity must keep, but not specifying the form or type of system in which those records must be maintained is the most flexible means of proposing this regulation for all businesses. However, FDA also believes that each provision in this proposed rule is necessary to tracing investigations, so we do not propose any additional flexibility for small or very small businesses.

Finally, FDA is proposing several exemptions based on facility type. Since the majority of facilities of each type are small businesses, these exemptions will reduce the small business burden of this regulation. In the proposed rule, FDA exempts retail facilities from having to maintain records of final consumers who purchase retail food products. Requiring firms to collect and maintain consumer information would increase the burden on retail facilities by at least the amount of the current redesign burden and current additional records maintenance burden summarized in Table 40 of this document. Without this exemption, retail firms (including small retail firms) would have to design and maintain an entirely new recordkeeping system.

Most other small business exemptions are infeasible for this regulation because we believe records held by these businesses are an important link in the chain of custody for the food products. As shown in Table 39 of this document, a large percentage of the food industry would be exempt under any blanket small business exemption. Even nonemployee businesses (who have no paid employees, the smallest exemption possible) still constitute a substantial proportion of the food industry. Any type of exemption in the middle of the

supply chain very likely would make records unavailable and therefore would break the chain of custody of many products during tracing investigations.

The Bioterrorism Act exempts farms and restaurants. Because most farms and restaurants are small businesses, this exemption provides regulatory relief to small entities. In addition, in this proposed rule the term ''farm'' includes facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; ''farm'' also includes facilities that manufacture or process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership. Most of these facilities are small entities. The statutory exemptions provide considerable relief to small entities without compromising the purpose of the recordkeeping regulation. FDA will continue to conduct research regarding possible further exemptions, and requests comments regarding possible exemptions that would provide additional relief for small businesses while still accomplishing the goals of the Bioterrorism Act.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $112,300,000. FDA has determined that this proposed rule does constitute a significant rule under the Unfunded Mandates Reform Act.

Most of the requirements of the Unfunded Mandates are fulfilled in the Executive Order 12866 analysis, above. The requirements under the Unfunded Mandates Act of 1995 include assessing the rule's effects on future costs; productivity; particular regions, communities, or industrial sectors; economic growth; full employment; job creation; and exports.

Future costs: The future costs from the recordkeeping rule include the recurring costs, which reach their long-term value in the third year after the proposed rule would become final. These costs would be incurred by domestic facilities that manufacture, process, pack, transport, distribute, receive, hold, or import food, and the foreign facilities that are subject to this proposed rule (foreign manufacturers, processors, packers, and holders of food that would be required to register).

Recurring costs from collecting new information would be incurred in each future year. The estimates of these costs were modeled using the previous analysis of the juice HAACP regulation as a frame of reference. An hourly burden of 30 minutes a week was used for the additional monitoring and recordkeeping that would be required from this proposed rule. This hourly burden estimate was modified for foreign facilities and convenience stores to allow for structural differences assumed in their operations. For a fuller illustration of the future costs of the proposed rule, see Table 20 of this document.

TABLE 42.—FUTURE COSTS

	Mean	Low	High
Year 3 and later years	$221,130,000	$212,313,000	$229,680,000

Particular regions, communities, or industrial sectors: The costs of the recordkeeping requirement will be shared among domestic manufacturers, processors, packers, transporters, receivers, holders, and importers of food, and the foreign facilities that would be subject to this proposed rule (foreign holders, packers, manufacturers, and processors that would be required to register) as well as domestic consumers. The higher costs incurred by domestic and foreign suppliers as a result of these regulations will mostly be passed on to consumers in the form of higher food prices. Since consumer demand for food is highly inelastic almost all of the higher costs incurred by food suppliers will be passed on to consumers. Consequently, higher food prices will reduce real incomes for all consumers. However, we believe that the benefits from these regulations will justify the reduction in real incomes. These benefits are measured as an improved ability by the FDA to respond to and contain threats of serious adverse health consequences from accidental or deliberate contamination of food.

National productivity, economic growth, job creation, and full employment: Although this proposed regulation is costly, we do not expect it to substantially affect national productivity, growth, jobs, or full employment. The total costs will be small relative to the economy, and will be offset by benefits. The improved ability to respond to, and contain, serious adverse health consequences means less illness and fewer sick days taken by employees, and lower adjustment costs by firms that would otherwise need to hire replacement employees.

Exports: This proposed rule would require additional records to be kept throughout the production and distribution chain for food. The additional recordkeeping costs would increase the total costs of production and distribution for all of the regulated products, including products sold within the United States and across national borders. These increased costs will be largely passed on to consumers in the form of higher prices, which will tend to reduce the quantity demanded of the regulated products. The increased prices of U.S. exports could reduce the quantity of U.S. exports demanded, particularly in comparison with exports from countries that do not implement similar recordkeeping regulations. We expect this effect to be insignificant, because under the proposed rule (option 10, described above), the increases in the price of U.S. exports (and resulting decreases in quantity demanded) would be quite small.

D. SBREFA Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that

this proposed rule, when final, will be a major rule for the purpose of congressional review.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information would have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Recordkeeping and Records Access Requirements for Food Facilities

Description: The Bioterrorism Act contains a provision authorizing the Secretary to develop regulations requiring food facilities that manufacture, process, pack, hold, receive, distribute, transport, or import food to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food, animal food, or food ingredients. Records for nontransporters must include the name and full contact information of sources, recipients, and transporters, an adequate description of the food including the quantity and the way that it is packaged, and the receipt and shipping dates. Records for transporters must include similar information about the food or food packaging, sources, and recipients, identification of all modes of transportation, and responsible individuals, while the food or food packaging is in the custody of the transporter.

Description of Respondents: Facilities that manufacture, process, pack, hold, receive, distribute, transport, or import food are required to establish and maintain records, including facilities in both interstate and intrastate commerce. Foreign manufacturers, processors, packers, and holders of food that would be required to register are required to maintain records if they ship food to the United States.

Burden: FDA estimates that the paperwork burden of this rule will be incurred by the number and types of firms and facilities listed in Table 43 of this document. FDA assumes that, approximately 841,000 facilities owned by approximately 646,000 firms would be covered. This number includes domestic facilities that manufacture, process, transport, distribute, pack, receive, hold, or import food, and the foreign facilities that manufacture, process, package, or hold food destined for consumption or use in the United States that would be required to register. Some of the recordkeeping burden will be incurred at the firm level and some of the burden will be incurred at the facility level.

TABLE 43.—AFFECTED FACILITY AND FIRM DETAILS

Type	Facility Estimate	Firm Estimate
Manufacturers	43,376	36,948
Wholesalers/Warehouses	95,745	76,952
Packaging[1]	36,907	34,633
Transporters/Packers	16,773	15,171
Retail Grocery and Specialty Food	207,657	153,277
Convenience Stores	128,985	68,866
Mixed-Type Facilities That Have Farms	30,497	24,397
Importers	18,902	15,122
Total Domestic	578,842	425,366
Final Holders	77,427	61,942
De minimus Processors/Packagers	22,600	18,080
Manufacturers	125,450	106,858
Other Facility Types		
Total Foreign	225,477	186,879

[1] Including outer packaging and food contact substances.

The recordkeeping burden for §§ 1.337, 1.345, and 1.352 includes learning about the regulation requirements, the redesign of records, and records maintenance including information collection for these records. The burden for § 1.361 is associated with planning for and executing an FDA request for records. Because it is difficult to estimate with any degree of precision the burden incurred from executing a records access request, we only compute the burden for firms to prepare for a potential records access request from FDA.

The burden for learning the regulatory requirements of this proposed recordkeeping rule may be shared by firms that also need to learn the regulatory requirements of the proposed rule entitled ''Registration of Food Facilities'' (68 FR 5378, February 3, 2003). The learning burden presented in Table 44 of this document includes the total number of hours needed to learn and understand the records required for compliance. This is a one-time burden that covered firms will incur in the first year following enactment of the final rule.

The records redesign burden presented in Table 44 of this document reflects the burden that some firms will incur by adding a limited amount of new information to their records. Some firms will not already be keeping the required information in a readily accessible form. The records redesign burden includes labor and capital costs associated with modifying existing forms so that they are better suited to meet the recordkeeping requirements. This is assumed to be a one-time burden incurred by each covered firm in the first and second years following implementation of the final rule.

The records access preparation burden presented in Table 44 of this document reflects the burden of preparing a plan for modifying current business practices in order to be able to respond to an FDA records request in the 4-hour or 8-hour required timeframe. The estimate of the records access planning burden is a one-time burden that would be incurred in the first and second years following enactment of the final rule. We assume that this burden will be incurred by each facility.

FDA expects that personnel at most facilities will incur a records maintenance burden due to collecting, recording, and checking for accuracy the limited amount of additional information required by the proposed rule. The burden from this activity is reported in table 45 of this document and is assumed to be incurred by all facilities in each subsequent year following enactment of the final rule. Finally, new firms are assumed to incur burdens from learning and records access preparation in each subsequent year following enactment of the final rule. These burdens for new firms are reported in table 44 of this document.

TABLE 44.—ESTIMATED ANNUAL RECORDKEEPING BURDEN—ONE-TIME BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Record	Capital Costs	Total Hours
1.337, 1.345, and 1.352, (Learning)	804,319	1	804,319	6.853		5,512,000
1.337, 1.345, and 1.352, (Redesign)	278,858	1	278,858	29.607	$130,582,000	8,256,000
1.361 (Access Preparation)	552,630	1	552,630	5.626		3,109,000
Total						16,877,000

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 45.—ESTIMATED ANNUAL RECORDKEEPING BURDEN—SUBSEQUENT YEARS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Record	Total Hours
1.337, 1.345, and 1.352 (Additional Records Maintenance)	772,410	1	772,410	10.625	8,207,000
1.337, 1.345, and 1.352, (Learning for New Firms)	80,432	1	80,432	6.853	551,000
1.361 (Access Preparation for New Firms)	55,263	1	55,263	5.626	311,000
Total					9,069,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to OMB (see **ADDRESSES**).

V. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

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

VII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. FDA cannot be responsible for addressing comments submitted to the wrong docket or that do not contain a docket number. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA notes that the comment period for this document is shorter than the 75-day period that the agency customarily provides for proposed rules that are technical or sanitary or phytosanitary (SPS) measures. FDA believes that a 60-day comment period is appropriate in this instance. Executive Order 12889, ''Implementation of the North American Free Trade Agreement'' (58 FR 69681, December 30, 1993), states that any agency subject to the Administrative Procedure Act must provide a 75-day comment period for any proposed Federal technical regulation or any Federal SPS measure of general application. Executive Order 12889 provides an exception to the 75-day comment period where the United States considers a technical or SPS measure of general application necessary to address an urgent problem related to the protection of human, plant, or animal health. FDA has concluded that this proposed rule is subject to the exception in Executive Order 12889.

The Bioterrorism Act states that it is intended ''[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.'' In order to meet these objectives, section 306 of the act requires FDA to propose and issue final regulations requiring the establishment and maintenance of records within 18 months of the Bioterrorism Act's enactment, which is by December 12, 2003. This expedited timeframe reflects the urgency of the U.S. Government's need to prepare to respond to bioterrorism and other food-related emergencies. Accordingly, FDA has concluded that the urgency of this matter is sufficient justification for shortening the public comment period for this proposal to 60 days, consistent with Executive Order 12889.

FDA will not consider any comments submitted after the 60-day comment period closes and does not intend to grant any requests for extension of the comment period due to the Bioterrorism Act's December 12, 2003, deadline.

VIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses in this document, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

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List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 11

Administrative practice and procedure, Computer technology, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1 and 11 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 304, 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Subpart J is added to part 1 to read as follows:

Subpart J—Establishment, Maintenance, and Availability of Records

General Provisions

Sec.
1.326 Who is subject to this subpart?
1.327 Who is excluded from all or part of the regulations in this subpart?
1.328 What definitions apply to this subpart?
1.329 Do other statutory provisions and regulations apply?
1.330 Can existing records satisfy the requirements of this subpart?

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Previous Source of All Food

1.337 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate previous source?

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of All Food

1.345 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate subsequent recipient?

Requirements to Establish and Maintain Records to Trace the Transportation of All Food

1.351 Who is required to establish and maintain records for tracing the transportation of all food?
1.352 What information is required in the transportation records?

General Requirements

1.360 What are the record retention requirements?
1.361 What are the record availability requirements?
1.362 What records are excluded from this subpart?
1.363 What are the consequences of failing to establish or maintain records or make them available to FDA?

Effective Dates

1.368 What are the compliance dates for this subpart?

Subpart J—Establishment, Maintenance, and Availability of Records

General Provisions

§ 1.326 Who is subject to this subpart?

(a) Domestic persons who manufacture, process, pack, transport, distribute, receive, hold, or import food intended for consumption in the United States are subject to the regulations in this subpart, unless you qualify for one of the exclusions in § 1.327. In addition, foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States are subject to these regulations, unless you qualify for one of the exclusions in § 1.327. If you conduct more than one type of activity at a location, you are required to keep records with respect to those activities covered by this subpart, but are not required by this subpart to keep records with respect to activities that fall within one of the exclusions in § 1.327.

(b) Persons subject to the regulations in this subpart must keep records whether or not the food enters interstate commerce.

§ 1.327 Who is excluded from all or part of the regulations in this subpart?

(a) Farms are excluded from all of the regulations in this subpart;

(b) Restaurants are excluded from all of the regulations in this subpart;

(c) Fishing vessels including those that not only harvest and transport fish but also engage in practices such as heading, eviscerating, or freezing intended solely to prepare fish for holding on board a harvest vessel are excluded from all of the regulations in this subpart, except § 1.361 and § 1.363. However, those fishing vessels otherwise engaged in processing fish, which for purposes of this subsection means handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding, are subject to all of the regulations in this subpart;

(d)(1) All retail facilities are excluded from § 1.345 of this subpart;

(2) Retail facilities that employ 10 or fewer full-time equivalent employees that:

(i) Are located in the same general physical location as a farm; and

(ii) Sell unprocessed food grown or raised on that farm or on another farm located in the same general physical location are excluded from all of the regulations in this subpart, except § 1.361 and § 1.363, with respect to that unprocessed food.

(e) Persons who manufacture, process, pack, transport, distribute, receive, hold, or import food that is within the exclusive jurisdiction of the U.S. Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) are excluded from all of the regulations in this subpart with respect to that food.

(f) Foreign facilities are excluded from all the regulations in this subpart, if food from such facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States. This exclusion does not apply to a foreign facility if the further manufacturing/processing (including packaging) conducted by the subsequent facility consists of adding labeling or any similar activity of a de minimis nature.

(g) Persons who manufacture, process, pack, transport, distribute, receive, hold, or import pet food who are not subject to the recordkeeping provisions of the animal proteins prohibited in ruminant feed regulation (§ 589.2000 of this chapter) are, with respect to pet food records, excluded from all the regulations in this subpart except for § 1.361 and § 1.363.

§ 1.328 What definitions apply to this subpart?

The definitions of terms in section 201 of the Federal Food, Drug, and Cosmetic Act apply to such terms when used in this subpart.

In addition, for the purposes of this subpart:

Act means the Federal Food, Drug, and Cosmetic Act.

Domestic person means any person located in any State or Territory of the

United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Farm means a facility in one general physical location devoted to the growing of crops for food, the raising of animals for food (including seafood), or both. The term ''farm'' includes:

(1) Facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; and

(2) Facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership.

Food has the meaning given in section 201(f) of the act (21 U.S.C. 321(f)). Examples of food include, but are not limited to: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals; bakery goods; snack foods; candy; and canned foods.

Foreign facility means a facility other than a domestic person that manufactures/processes, packs, or holds food for consumption in the United States.

Manufacturing/processing means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples include, but are not limited to: Cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging.

Nontransporter means a person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation.

Nontransporter immediate previous source means a person that last had an article of food before transferring it to another nontransporter.

Nontransporter immediate subsequent recipient means a nontransporter that acquires an article of food from another nontransporter.

Perishable food means food that is not heat-treated, not frozen, and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.

Pet food means food for nonfood-producing animals.

Recipe means the quantitative formula used in the manufacturing of the food product, but not the identity of the individual ingredients of the food.

Restaurant means a facility that prepares and sells food directly to consumers for immediate consumption. Restaurants include, but are not limited to, cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens. Facilities that provide food to interstate conveyances, rather than directly to consumers, are not restaurants.

Retail facility means a facility that sells food products directly to consumers only. The term includes, but is not limited to, grocery and convenience stores, vending machine locations, and commissaries.

Transporter means a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food. A person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation is not a transporter.

Transporter's immediate previous source means a person from whom a transporter received an article of food. This source can be either another transporter or a nontransporter.

Transporter's immediate subsequent recipient means a person to whom a transporter delivered an article of food. This recipient can be either another transporter or a nontransporter.

You means a person or facility subject to this subpart under § 1.326.

§ 1.329 Do other statutory provisions and regulations apply?

(a) In addition to the regulations in this subpart, you must comply with all other applicable statutory provisions and regulations related to the establishment and maintenance of records for foods except as described in paragraph (b) of this section. For example, the regulations in this subpart are in addition to existing recordkeeping regulations for low acid canned foods, juice, seafood, infant formula, color additives, bottled water, animal feed, and medicated animal feed.

(b) Records established or maintained to satisfy the requirements of this subpart that meet the definition of electronic records in § 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Records that satisfy the requirements of this subpart but that are also required under other applicable statutory provisions or regulations remain subject to part 11 of this chapter.

§ 1.330 Can existing records satisfy the requirements of this subpart?

The regulations in this subpart do not require duplication of existing records if those records contain all of the information required by this subpart. If a covered person keeps records of all of the information as required by this subpart in order to comply with other Federal, State, or local regulations, or for any other reason, then those records may be used to meet these requirements.

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Previous Source of All Food

§ 1.337 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate previous source?

(a) If you are a nontransporter, you must establish and maintain the following records for all food you receive. Your records must include information reasonably available to you to identify the specific source of each ingredient that was used to make every lot of finished product.

(1) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate previous source, whether domestic or foreign;

(2) An adequate description of the type of food received, to include brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);

(3) The date you received the food;

(4) The lot or code number or other identifier of the food (to the extent this information exists);

(5) The quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and

(6) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the transporters who transported the food to you.

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of All Food

§ 1.345 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate subsequent recipient?

(a) If you are a nontransporter, you must establish and maintain the

following records for all food you release:

(1) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate subsequent recipient, whether domestic or foreign;

(2) An adequate description of the type of food released, to include brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);

(3) The date the food was released;

(4) The lot or code number or other identifier of the food (to the extent this information exists);

(5) The quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and

(6) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the transporters who transported the food from you.

(b) [Reserved]

Requirements to Establish and Maintain Records to Trace the Transportation of All Food

§ 1.351 Who is required to establish and maintain records for tracing the transportation of all food?

If you are a domestic person and you are a transporter of food, you are required to establish and maintain records containing information not only about your transportation activities but also about the person from whom you received the food (the transporter's immediate previous source) and the person to whom you delivered it (the transporter's immediate subsequent recipient), as specified in § 1.352.

§ 1.352 What information is required in the transportation records?

(a) You must establish and maintain the following records for each food you transport:

(1) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had the food immediately before you, and the date you received it from that person;

(2) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had the food immediately after you, and the date you delivered it to that person;

(3) An adequate description of the type of food, including brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);

(4) The lot or code number or other identifier of the food (to the extent this information exists);

(5) The quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle);

(6) Identification of each and every mode of transportation (e.g., company truck, private carrier, rail, air, etc.), and the individual responsible, from the time you first received the food until the time you delivered it.

(b) [Reserved]

General Requirements

§ 1.360 What are the record retention requirements?

(a) You must create the required records at the time the activity occurs.

(b) You must retain for 1 year after the date the records were created all required records for perishable foods not intended for processing into nonperishable foods.

(c) You must retain for 2 years after the date the records were created all required records for all other foods, except animal foods.

(d) You must retain for 1 year after the date the records were created all required records for animal food, including pet food.

(e) You must retain all records required by these regulations at the establishment where the covered activities described in the records occurred (onsite) or at a reasonably accessible location.

(f) The maintenance of electronic records is acceptable.

§ 1.361 What are the record availability requirements?

When FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, any records and other information accessible to FDA under section 414 or 704(a) of the act must be readily available for inspection and photocopying or other means of reproduction. Such records and other information must be made available within 4 hours of a request if the request is made between 8 a.m. and 6 p.m., Monday through Friday, or within 8 hours of a request if made at any other time, by an officer or employee duly designated by the Secretary who presents appropriate credentials and a written notice. If records and other information are stored offsite, the records must be retrieved and provided onsite within the specified time period. Electronic records are considered to be onsite if they are accessible from an onsite location.

§ 1.362 What records are excluded from this subpart?

The establishment and maintenance of records as required by this subpart does not extend to recipes for food, financial data, pricing data, personnel data, research data, or sales data (other than shipment data regarding sales).

§ 1.363 What are the consequences of failing to establish or maintain records or make them available to FDA?

(a) The failure to establish or maintain records as required by section 414(b) of the act or the refusal to permit access to or verification or copying of any such required record is a prohibited act under section 301 of the act (21 U.S.C. 331).

(b) The failure to make records or other information available to FDA as required by section 414 or 704(a) of the act is a prohibited act under section 301 of the act.

Effective Dates

§ 1.368 What are the compliance dates for this subpart?

(a) The regulations in this subpart shall be effective 6 months after the date of publication of the final rule in the **Federal Register**. However, this subpart is not binding on small and very small businesses until the dates listed in paragraphs (a)(1) and (a)(2) of this section.

(1) The regulations in this subpart are binding 12 months after the date of publication of the final rule in the **Federal Register**, for small businesses employing fewer than 500 but more than 10 full-time equivalent employees.

(2) The regulations are binding 18 months after the date of publication of the final rule in the **Federal Register**, for very small businesses that employ 10 or fewer full-time equivalent employees.

(b) [Reserved]

PART 11—ELECTRONIC RECORDS; ELECTRONIC SIGNATURES

3. The authority citation for 21 CFR part 11 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262.

4. Section 11.1 is amended to add paragraph (f) to read as follows:

§ 11.1 Scope.

* * * * *

(f) This part does not apply to records required to be established or maintained by §§ 1.326 through 1.368 of this chapter. Records that satisfy the requirements of Part 1, Subpart J of this chapter but that are also required under other applicable statutory provisions or regulations remain subject to this part.

Dated: May 1, 2003.

Mark B. McClellan,

Commissioner of Food and Drugs.

Dated: May 2, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 03–11460 Filed 5–5–03; 5:08 pm]

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Federal Register

Friday,
May 9, 2003

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 1 and 16

Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 16

[Docket No. 02N–0275]

RIN 0910–AC38

Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that provides procedures for the detention of an article of food, if an officer or qualified employee of FDA has credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals (''administrative detention''). The proposed regulation implements the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which authorizes the use of administrative detentions and requires regulations establishing procedures for instituting on an expedited basis certain enforcement actions against perishable food subject to a detention order.

DATES: Submit written or electronic comments by July 8, 2003.

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

FOR FURTHER INFORMATION CONTACT: Marquita Steadman, Center for Food Safety and Applied Nutrition (HFS–007), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–827–6733.

SUPPLEMENTARY INFORMATION:

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I. Background and Legal Authority

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in title III (Protecting Safety and Security of the Food and Drug Supply), Subtitle A (Protection of Food Supply), section 303, which amends section 304 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334 *et seq.*) by adding paragraph (h) to provide that an officer or qualified employee of FDA may order the detention of any article of food that is found during an inspection, examination, or investigation under the act if the officer or qualified employee has credible evidence or information indicating that the article of food presents a threat of serious adverse health consequences or death to humans or animals. This provision also requires the Secretary of Health and Human Services (the Secretary) to provide by regulation procedures for instituting on an expedited basis certain enforcement actions against perishable food subject to a detention order. Section 303 of the Bioterrorism Act also amends the act by adding a new prohibited act as paragraph (bb) to section 301 of the act (21 U.S.C. 331)

The major components of section 303 of the Bioterrorism Act are as follows:

• *Criteria used to trigger an administrative detention*: Amends section 304 of the act to authorize an officer or qualified employee of FDA to order the detention of any article of food that is found during an inspection, examination, or investigation under the act, if the officer or qualified employee has credible evidence or information indicating such article presents a threat of serious adverse health consequences or death to humans or animals.

• *Approval required*: The Secretary, or an official designated by the Secretary, must approve the detention order. An ''official designated by the Secretary'' means the District Director of the district where the detained article of food is located, or an FDA official senior to such director.

• *Period of detention*: The detention period will be for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary to enable the Secretary to institute a seizure or injunction action.

• *Required rulemaking*: The Secretary must by regulation provide for procedures for instituting certain enforcement actions on an expedited basis with respect to perishable food subject to a detention order.

• *Security of detained article of food*: The detention order may require that the detained article of food be labeled or marked as detained. The order must require the removal of the detained article of food to a secure facility, as appropriate.

• *Appeal procedure*: Any person who would be entitled to claim the detained article of food if such article were seized may appeal the detention order to the Secretary. Within 5 days after such

appeal is filed, after providing opportunity for an informal hearing, the Secretary must confirm or terminate the detention order. The appeal process terminates if the Secretary institutes an action for seizure or injunction regarding the article of food involved. Confirmation of a detention order is considered a final agency action.

• *Prohibited act*: Amends section 301 of the act making it a prohibited act to transfer a detained article of food in violation of a detention order, or to remove or alter any mark or label required by the detention order to identify the article of food as detained.

Section 303 of the Bioterrorism Act also includes a provision authorizing temporary holds at ports of entry that will not be addressed in this proposed regulation, but through separate guidance that FDA plans to develop and issue. The temporary hold provision authorizes FDA to request the Secretary of Treasury to institute a temporary hold for up to 24 hours on an article of food offered for import at a U.S. port of entry if FDA has credible evidence or information indicating that an article of food presents a threat of serious adverse health consequences or death to humans or animals, and FDA is unable immediately to inspect, examine, or investigate such article. FDA has received comments on the temporary hold provision in the public docket (Docket No. 02N–0275). FDA plans to consider these comments in developing guidance on the temporary hold provision.

FDA is proposing to amend title 21 of the Code of Federal Regulations (CFR) by establishing a new subpart to part 1 (21 CFR part 1) consisting of subpart K entitled ''Administrative Detention of Food for Human or Animal Consumption.'' In this proposed rule, we describe the procedures for how FDA will detain an article of food and the process for appealing a detention order. We also address procedures for instituting on an expedited basis certain enforcement actions with respect to detained perishable foods. This proposed rule also makes a conforming amendment to part 16 (21 CFR part 16) entitled ''Regulatory Hearing Before the Food and Drug Administration.'' Although the statutory requirements in section 304(h) of the act are self-executing and are currently in effect, FDA is issuing this regulation to further refine aspects of the administrative detention requirements.

The administrative detention process described in this proposed rule is modeled after FDA's medical device administrative detention regulation found at § 800.55 (21 CFR 800.55). FDA believes that this process has been effective and efficient for medical device administrative detentions and should also work well for administrative detentions of food. In addition, using the medical device regulations as a model will be helpful to the agency as field offices are familiar with this detention process and training will not need to be as extensive.

Section 303 of the Bioterrorism Act provides for an opportunity for an informal hearing as part of the appeal process. The regulations in part 16 set out FDA's informal hearing procedures and provide that its procedures apply when the act or FDA regulations provide for an opportunity for a hearing and no specific hearing regulations exist (see § 16.1(b)). Proposed § 1.403 states that any informal hearing held on an appeal of a detention order will be conducted in accordance with part 16 except as noted therein.

Although section 303 of the Bioterrorism Act requires FDA only to promulgate regulations establishing procedures for instituting on an expedited basis certain enforcement actions against perishable food subject to a detention order, FDA also is proposing in this regulation to describe the procedures for how FDA will detain both perishable and nonperishable articles of food and the process for appealing a detention order. If FDA did not establish other requirements for the process for appealing a detention order in this proposed regulation, it would be difficult for FDA to meet certain requirements in section 303 of the Bioterrorism Act. For example, section 303 of the Bioterrorism Act requires FDA, after providing an opportunity for an informal hearing, to confirm or terminate a detention order within 5 days after the date of appeal. Two of the requirements in this proposed rule would be to impose a deadline for filing an appeal and a limitation on the length of the informal hearing (see proposed §§ 1.402 and 1.403). These proposed requirements are intended to ensure that FDA meets section 303's timing requirements. FDA is proposing to codify the procedures for how FDA will detain an article of food to clarify our procedures for the public and to follow FDA's model for the administrative detention of medical devices that has its procedures codified at 21 CFR 800.55. FDA is proposing to incorporate these provisions in a regulation instead of a guidance document to make them enforceable since guidance documents are not binding.

FDA wants to make clear that this proposed rule does not implement section 801 of the act (21 U.S.C. 381), despite its use of the term ''detention''. As explained in this preamble, this proposed rule implements section 303 of the Bioterrorism Act, which amends section 304 of the act. This amendment grants FDA the authority to detain food upon credible evidence or information of a threat of serious adverse health consequences or death to humans or animals. FDA has had similar authority for medical devices under section 304(g) of the act since 1976, and usually refers to this authority as ''administrative detention'' (§ 800.55). Section 801(a) of the act provides that FDA shall refuse the admission of any article of food that has been imported or offered for import that appears, among other things, to be adulterated or misbranded under the act, based on physical examination or otherwise. Under section 801(a), before FDA refuses admission to an article that appears violative, importers are provided with a notice of hearing on refusal of admission, which notifies them that the article may be subject to refusal of admission, and provides them with an opportunity to introduce testimony and establish that the article is fully in compliance with the act (§ 1.94). FDA refers to this administrative process concerning imports as detention (see ''FDA Regulatory Procedures Manual'' (RPM), chapter 9). Because of the authorities available to FDA and the U.S. Customs Service to control imported food subject to section 801(a) of the act, FDA does not expect to frequently use administrative detention under section 303 of the Bioterrorism Act to control such imported food.

Section 304(h) of the act, as added by section 303 of the Bioterrorism Act, provides that:

> An officer or qualified employee of the Food and Drug Administration may order the detention, in accordance with this subsection, of any article of food that is found during an inspection, examination, or investigation under this Act conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals.

This language does not include a limitation similar to that in section 304(g) of the act that provides for administrative detentions of devices during inspections conducted under section 704 of the act, a provision of the act that has an interstate commerce component. In addition, the prohibited act related to administrative detention of food, section 301(bb) of the act, unlike some other prohibited acts in section 301, does not include an interstate commerce component.

Therefore, FDA tentatively concludes that all food would be subject to administrative detention under section 304(h) of the act, whether or not the food enters interstate commerce. Because a bioterrorist threat involving food or other food-related emergencies would have the same effect on the public health regardless of whether the food had originated from an out of State source, FDA believes that administrative detention should apply to all food, whether or not the food was in interstate commerce. FDA recognizes, however, that section 304(h) of the act is not clear in this regard. For example, section 304(h) includes references to certain enforcement provisions of the act, such as section 304(a) of the act, an enforcement provision that includes an interstate commerce requirement. Because this is an important and controversial issue, the agency is seeking comment on whether its tentative conclusion that it has authority to administratively detain food in intrastate commerce is correct and, if so, whether FDA should use that authority. FDA also seeks comments on the amounts and types of food that would only be in intrastate commerce.

This proposed rule complies with section 315 of the Bioterrorism Act entitled ''Rule of Construction,'' which states that nothing in title III of the Bioterrorism Act, or an amendment made by title III, shall be construed to alter the jurisdiction between the U.S. Department of Agriculture (USDA) and the U.S. Department of Health and Human Services under applicable statutes and regulations. Accordingly, this proposed rule does not apply to food regulated exclusively by the USDA under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). However, food that is jointly regulated by FDA and USDA would be subject to this proposed rule. An example of a food that is jointly regulated by FDA and USDA is frozen TV dinners containing both meat and fish.

In addition to section 303 of the Bioterrorism Act, which amends the act as described previously in section I of this document, FDA is relying on section 701(a) of the act (21 U.S.C. 371(a)) in issuing this proposed rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act.

II. Preliminary Stakeholder Comments

On July 17, 2002, FDA sent an open letter to members of the public interested in food issues outlining the four provisions of title III of the Bioterrorism Act which require FDA to issue regulations in an expedited time period, and FDA's plans for implementing them (see http://www.cfsan.fda.gov/~dms/sec-ltr.html). In the letter, FDA invited stakeholders to submit comments to FDA by August 30, 2002, for FDA's consideration as it developed this proposed rule. FDA also held several meetings with representatives of industry, consumer groups, other Federal agencies, and foreign embassies after sending out the July 17, 2002, letter in order to solicit stakeholder comments. In response to these solicitations, FDA received a number of comments regarding section 303 of the Bioterrorism Act.

FDA has considered all the comments received by August 30, 2002. FDA will consider all comments we have received so far with the comments we receive during the public comment period for this proposed rule in developing the final rule.

Some of the significant comments FDA received on or before August 30, 2002, include the following:

- The regulations should apply to all foods within FDA's jurisdiction, (e.g., processed food, fresh agriculture, and dietary supplement products).
- The written notice of detention should describe the article of food that has been detained, the quantity of the food, its location, and the basis for the detention. A written notice of detention also should include a written explanation of the appeal right and information that will enable a person entitled to appeal to understand how to file such an appeal.
- FDA's regulations should ensure that if a detained article of food is moved to a secure facility, the food will be maintained under temperature, humidity, and other conditions that will maintain the value and quality of the food.
- A period of 24 to 48 hours from the time of request to the time of holding a hearing is the appropriate timeframe given the short life of many perishable foods.
- Any regulations with respect to detention of food should specify how disputes and resolutions will be handled in order to help prevent spoilage of detained food.
- When an appeal against the detention is filed, FDA should deal with it expeditiously within a fixed period of time to minimize the impact on private businesses.
- An appellant should be entitled to file a written statement of his or her position. The findings of the Secretary after the hearing should be set forth in writing since the Bioterrorism Act provides that the Secretary's decision is ''final agency action'' under the Administrative Procedure Act, which is judicially reviewable.
- A sanction should be imposed if the detained product is moved before the detention period has expired or has been terminated.

III. The Proposed Regulation

This proposed rule implements the administrative detention provision in section 303 of the Bioterrorism Act. If the regulation is made final as proposed, administrative detention, together with the proposed rules implementing section 305 (registration), section 306 (recordkeeping), and section 307 (prior notice) of the Bioterrorism Act, will enable FDA to act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or to other food-related emergencies.

In establishing and implementing this proposed rule, FDA will comply fully with its international trade obligations, including applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement. For example, FDA believes this proposed rule is not more trade-restrictive than necessary to meet the objectives of the Bioterrorism Act. The criteria FDA would use to order a detention are taken directly from the Bioterrorism Act and are the same for both domestic and foreign articles of food.

A. Highlights of Proposed Rule

The key features of this proposed rule are as follows:

- An officer or qualified employee of FDA may order the detention of domestic or imported food for up to 30 days if FDA has credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals.
- The FDA District Director in the district in which the article of food is located or an FDA official senior to such director must approve a detention order.
- FDA may require that the detained article of food be labeled or marked as detained with official FDA tags or labels. The FDA tag or label will include, among other information, a statement that the article of food must not be consumed, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative.
- A violation of a detention order or the removal or alteration of the tag or label is a prohibited act.

• FDA will state in the detention order the location and any applicable conditions under which the food is to be held.

• FDA may direct that the article of food be moved to a secure facility, if appropriate. An article of food moved to a secure facility remains under detention before, during, and after such movement.

• FDA may approve a request for a limited conditional release of a detained article of food for purposes of destruction, movement to a secure facility, preservation of the detained article of food, or any other purpose that FDA believes is appropriate. An article of food transferred under a limited conditional release remains under detention before, during, and after the transfer.

• Any transfer of a detained article of food in violation of a detention order is a prohibited act.

• Any person who would be entitled to be a claimant for the article of food, if seized, may appeal a detention order and, as part of that appeals process, may request an informal hearing. If a hearing is granted, an FDA Regional Food and Drug Director (RFDD) or another official senior to an FDA District Director will serve as the presiding officer of the hearing.

• The proposed rule includes appeal and hearing timeframes for both perishable and nonperishable detained articles of food.

• *Perishable food*:

– An appeal must be filed within 2 calendar days of receipt of the detention order.

– If a hearing is requested in the appeal, and FDA grants the request, the hearing will be held within 2 calendar days after the date the appeal is filed.

– FDA's decision on appeal will be issued 5 days after the appeal is filed.

• *Nonperishable food*:

– A notice of intent to file an appeal and to request a hearing must be filed within 4 calendar days of receipt of the detention order.

– An appeal must be filed within 10 calendar days of receipt of the detention order.

– If a hearing is requested in the notice of intent and appeal, and FDA grants the request, the hearing will be held within 3 calendar days after the appeal is filed.

– FDA's decision on appeal will be issued 5 days after the appeal is filed.

• The proposed expedited procedures for certain enforcement actions with respect to perishable foods require FDA to send a seizure recommendation to the Department of Justice within 4 calendar days after the detention order is issued, unless extenuating circumstances exist.

• Confirmation of a detention order by the FDA presiding officer is considered final agency action.

B. General Provisions

1. What Definitions Apply to This Subpart? (Proposed § 1.377)

Proposed § 1.377 describes the definitions that apply to this subpart and states that the definition of terms that appear in section 201 of the act (21 U.S.C. 321) apply to such terms when used in this subpart.

Proposed § 1.377 also defines specific terms used in the proposal.

• *Act* means the Federal Food, Drug, and Cosmetic Act.

• *Authorized FDA representative* means the FDA District Director in whose district the article of food involved is located or an FDA official senior to such director. FDA's Office of Regulatory Affairs (ORA) is responsible for FDA's field operations and compliance related functions. The ORA field organization is divided into regional offices, which are headed by RFDDs. The regions are broken down into district offices, which are headed by District Directors. An RFDD is an FDA official senior to an FDA District Director.

• *Calendar day* means every day shown on the calendar. This term includes weekend days.

• *Food* has the meaning given in section 201(f) of the act. That definition is: ''(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.'' FDA also is proposing to include some examples of products that are considered food under section 201(f) of the act. These examples include, but are not limited to: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals (such as hogs and elk); bakery goods; snack foods; candy; and canned foods. ''Substances that migrate into food from food packaging'' include immediate food packaging or components of immediate food packaging that are intended for food use. Outer food packaging is not considered a substance that migrates into food.

• *Perishable food* means food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions. This perishable food definition has been modeled after the current RPM definition of ''perishable commodity''. Examples of perishable foods include, but are not limited to, fluid milk (but not ultrapasteurized); live fish, lobster, crab, other crustaceans, shellfish; and fresh fruits and vegetables.

We decided to use the RPM definition of ''perishable commodity'' as the basis for the definition of ''perishable food'' because the RPM definition is commonly used and understood by both industry and FDA. Furthermore, we believe this definition is appropriate in light of the 5-day (maximum) deadline for FDA to issue a decision on an appeal of a detention. Under the proposed deadlines for appeals involving the detention of a perishable food, FDA would issue a decision on an appeal prior to the expiration of the 7-day period. We believe the timeframes proposed here offer the best protection to appellants and products.

We invite comments and supporting data on how to best define ''perishable food'' for the purposes of this proposed rule.

• *We* means the U.S. Food and Drug Administration.

• *Working day* means any day from Monday through Friday, excluding federal holidays.

• *You* means any person who receives the detention order or that person's representative.

2. What Criteria Does FDA Use to Order a Detention? (Proposed § 1.378)

Proposed § 1.378 states the criteria FDA would use to order a detention. These criteria are taken directly from section 303 of the Bioterrorism Act. FDA may order a detention of an article of food that is found during an inspection, examination, or investigation under the act if an officer or qualified employee of FDA has credible evidence or information indicating that an article of food presents a threat of serious adverse health consequences or death to humans or animals.

The Bioterrorism Act articulates a standard of ''credible evidence or information'' for determinations of whether the evidence or information indicates that an article of food presents a threat of serious adverse health consequences or death to humans or animals. ''Credible evidence or information'' is an evidentiary standard that in simplest terms means evidence

or information that is ''worthy of belief or confidence; trustworthy.'' See Webster's Unabridged Dictionary (1998 ed.) (definition of ''credible''). Although various statutes and regulations use this or a similar standard, and courts have invoked or applied the standard of credible evidence or information in a large number of decisions, no precise definition of the standard exists. Instead, determinations of what constitutes credible evidence or information have been made on a case-by-case basis. Likewise, FDA has administered evidentiary standards under other provisions of the act (see e.g., section 304(g)) on a case-by-case basis without further defining those standards in regulation. We believe that a similar approach here is appropriate. In applying the credible evidence or information standard to administrative detention, FDA may consider a number of factors including, but not limited to, reliability, reasonableness, and the totality of the facts and circumstances.

The officers or qualified employees of FDA who may order a detention include, but are not limited to, FDA field investigators, other government employees commissioned or deputized by FDA, and FDA employees who have security clearance to receive national security information. An ''authorized FDA representative'' as defined in proposed § 1.377, would have to approve a detention order before the FDA officer or qualified employee may order a detention.

3. How Long May FDA Detain an Article of Food? (Proposed § 1.379)

Proposed § 1.379 sets forth the period of administrative detention, (i.e., the length of time an article of food may be detained), consistent with the requirements of section 303 of the Bioterrorism Act. The period of administrative detention must be a reasonable period that may not exceed 20 calendar days after the detention order is issued, unless it is determined that a greater period is required either to seize the article of food or to institute injunction proceedings. The Bioterrorism Act provides that FDA may detain food for up to 10 additional calendar days if necessary to enable FDA to institute a seizure or an injunction action. Proposed § 1.379 incorporates this authority. An example of when FDA envisions using this authority is when the results of confirmatory testing or other evidentiary development is not complete. The authorized FDA representative, defined in proposed § 1.377, may approve the additional 10 days of detention at the time the detention order is issued, or at any time within the initial 20-calendar-day period, by amending the detention order.

Proposed § 1.379 states that the entire detention period may not exceed 30 calendar days in total. This proposed section also allows the authorized FDA representative, in accordance with proposed § 1.384, to approve the termination of a detention order before the expiration of the detention period. FDA intends to proceed as expeditiously as possible to resolve all issues involved with particular administrative detentions.

4. Where and Under What Conditions Must the Detained Article of Food be Held? (Proposed § 1.380)

Proposed § 1.380(a) requires you to hold the detained article of food in the location and under the conditions specified by FDA in the detention order. Use of appropriate storage conditions, such as temperature, humidity, and other conditions may be necessary to protect the safety and wholesomeness of the detained article of food. This proposed requirement is consistent with the legislative history of the Bioterrorism Act (see H. Conf. Rept. No. 107–481, at 131 (2002)).

In proposing § 1.380(a), we also considered the experience that States have had with embargoes. As described in comments from States familiar with embargoing food on behalf of FDA or on their own initiative, States have ordered food embargoed and have provided requisite conditions that must be maintained while the food is embargoed, e.g., segregation from other products in the same warehouse.

In proposed § 1.380(b), the detained article of food must be moved to a secure facility if FDA determines that such movement is appropriate. FDA's determination of whether it is appropriate to require movement of a detained article will depend, in part, on whether we believe there is danger of the detained article entering the stream of commerce. FDA will make such determinations on a case-by-case basis considering several factors, including the adequacy of security where the detained article is located, and the ability to prevent the movement of the food. For example, if it appears likely that the detained food would be diverted, we would require the food to be moved to a secure facility. However, if the storage conditions are such that there appears to be no danger of the detained article of food moving into the stream of commerce, we would decide to keep the article of food detained at its current location.

There may be instances where we relocate the detained article of food to a secure facility. For example, FDA may not be confident that parties involved will adhere to a detention order. Rather than risk losing control over the detained article of food, FDA would relocate the detained article of food. There may be other situations where FDA decides to relocate the detained article to a secure facility.

Proposed § 1.380(b), also states that a detained article of food remains under detention before, during, and after movement to a secure facility, if FDA has requested such movement. As such, we will also state in the detention order any applicable conditions of transportation of an article of detained food. This may include determinations that the article to be removed to a secure facility must be moved under certain conditions. Similar to determinations of whether to require that food be removed to a secure facility, determinations of the appropriate conditions of transportation will be made on a case-by-case basis.

Proposed § 1.380(c) requires you to have received a limited conditional release under proposed § 1.381(c) before you move the detained article of food to a secure facility.

Proposed § 1.380(d) requires you to ensure that any required tags or labels under § 1.382 accompany the detained article during and after movement to the secure facility. This requirement applies until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the authorized FDA representative.

Proposed § 1.380(e) provides that the movement of an article of food in violation of a detention order issued under § 1.393 is a prohibited act under section 301 of the act. This proposed provision is consistent with the statutory language in section 303 of the Bioterrorism Act.

5. May a Detained Article of Food be Delivered to Another Entity or Transferred to Another Location? (Proposed § 1.381)

Proposed § 1.381 describes whether an article of food subject to a detention order can be delivered to another entity or transferred to another location. Proposed § 1.381(a) states that a detained article of food may not be delivered to another entity under the execution of a bond. Similarly, this proposed section also states that an article of food detained under section 303 of the Bioterrorism Act may not be delivered to any of its importers, owners, or consignees under section

801(b) of the act. The provisions found in this proposed paragraph are consistent with section 303 of the Bioterrorism Act, and are designed to keep foods that present a threat of serious adverse health consequences or death from moving in commerce.

Proposed § 1.381(b) prohibits, except as provided in proposed § 1.381(c), the transfer of a detained article of food within or from the place where it has been detained, or from the place to which it was moved, until an authorized FDA representative releases the article of food under proposed § 1.384 or the detention period expires under proposed § 1.379, whichever occurs first. This provision is necessary to ensure that the article of food subject to a detention order is not released into commerce.

Proposed § 1.381(c) provides that an authorized FDA representative may approve, in writing, a request for a limited conditional release of the detained article of food for any of the following purposes:

1. To destroy the article of food,
2. To move the detained article of food to a secure facility as described in the detention order,
3. To maintain or preserve the integrity or quality of the article of food, or
4. For any other purpose that the authorized FDA representative believes is appropriate in that case.

A limited conditional release of a detained article of food will be considered only in rare circumstances and only for the purposes described. We do not envision authorizing a limited conditional release under many circumstances because any movement increases the risk of inappropriate or unauthorized movement of detained articles of food into commerce. In order to decrease the chance of detained articles of food moving into commerce, the food should not be moved unless absolutely necessary. However, we recognize there may be cases where some movement is necessary. For example, it may be necessary to take steps to preserve the article of food until the detention is resolved, e.g., movement of a detained article of food from refrigerated storage to a freezer. This proposed section would allow such action in those limited circumstances that the agency finds appropriate.

As noted below, an article of food subject to a limited conditional release is still subject to detention and the requirements of this proposed rule.

Proposed § 1.381(d) requires you to submit a request for a limited conditional release in writing to the authorized FDA representative who approved the detention order. Your request must state the following:

- Reasons for movement;
- Exact address of and location in the new facility (or the new location within the same facility) where the detained article of food will be transferred;
- Explanation of how the new address and location will be secure, if FDA has directed that the article of food be detained in a secure facility; and
- Explanation of how the article of food will be held under any applicable conditions described in the detention order.

If your request is for the purpose of destroying the detained article of food, you also must submit a verified statement identifying the ownership or proprietary interest you have in the detained article of food. Under ''Federal Rules of Civil Procedure,'' Supplemental Rule C(6)(a), a person who asserts an interest in or right against property that is the subject of a seizure action in federal court must file a verified statement identifying the interest or right. The purpose of this requirement is to minimize the possibility that the detained article of food would be released for destruction to a person without the proper ownership or proprietary interest in the food.

Proposed § 1.381(e) states that a detained article of food remains under detention before, during, and after the transfer under a limited conditional release. Accordingly, we will prescribe applicable transportation conditions to an article transferred under a limited conditional release. This section also provides another security measure to prevent the detained article of food from moving into commerce. That is, we also require FDA supervision of all transfers of detained articles of food made under a limited conditional release, unless FDA declines such supervision in writing. If FDA declines such supervision, you will be required to immediately notify in writing the authorized FDA representative who approved the limited conditional release, that the article of food has reached its new location, and the specific location of the detained article of food within the new location. Such notification may be in the form of a fax, e-mail, or other form agreed to by the authorized FDA representative.

Proposed § 1.381(f) requires you to ensure that any tags or labels required under proposed § 1.382 accompany the detained article of food during and after movement. If FDA labels or marks the detained article of food under proposed § 1.382, this proposed provision would require that the tags or labels remain with the article of food until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the approving official.

Proposed § 1.381(g) provides that the transfer of an article of food in violation of a detention order issued under proposed § 1.393 is a prohibited act under section 301 of the act. This proposed provision is consistent with the statutory language in section 303 of the Bioterrorism Act.

6. What Labeling or Marking Requirements Apply to a Detained Article of Food? (Proposed § 1.382)

Proposed § 1.382 describes the labeling or marking requirements that apply to a detained article of food. This proposed section states that the officer or qualified employee of FDA who issues the detention order may label or mark the detained article of food with official FDA tags or labels that include the following information:

- A statement that the article of food is detained by FDA in accordance with section 304(h) of the act;
- A statement that the article of food must not be consumed, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative;
- A statement, consistent with the statutory language in section 303 of the Bioterrorism Act, that the violation of a detention order or the removal or alteration of the tag or label is a prohibited act under section 301 of the act, punishable by fine or imprisonment or both; and
- The detention order number, the date and hour of the detention order, the detention period, and the name of the officer or qualified employee of FDA who issued the detention order.

Any label or mark of detention will be attached as appropriate given the circumstances. In some instances, the mark or label may be attached to the food container, while in other instances, the mark may be fastened to a packing container. Where the agency cannot mark or label a container or packing container, a mark or label may be attached to accompanying documents. FDA may use other means of marking or labeling as appropriate or necessary. Once the detained article is released, or the detention period expires, FDA would remove, or authorize the removal of, the required labels or tags, as described in proposed § 1.384. Accordingly, we would not expect the proposed labeling and marking provision to impair the future ability to

distribute or market the article of food if the detention order is terminated.

7. What Expedited Procedures Apply When FDA Initiates a Seizure Action Against a Detained Perishable Food? (Proposed § 1.383)

Section 303 of the Bioterrorism Act directs the Secretary to issue procedures for instituting certain judicial enforcement actions on an expedited basis with respect to perishable food subject to a detention order. This provision directs FDA to issue procedures for instituting on an expedited basis seizure actions under section 304(a) of the act, or injunction actions under section 302 of the act (21 U.S.C. 332), or both. We have concluded that it is appropriate to focus on procedures to institute seizure actions on an expedited basis because a seizure is the most efficient judicial action for rapid control of a violative article of perishable food.

Proposed § 1.383 describes FDA's procedure for sending a seizure recommendation under section 304(a) of the act to the Department of Justice (DOJ) for a perishable food (defined in proposed § 1.377) subject to a detention order. We propose to send the seizure recommendation to DOJ within 4 calendar days after the detention order is issued, unless extenuating circumstances exist. If the fourth calendar day is not a working day when the government is open for business, we will advise the DOJ of our plans to recommend a seizure action on the last working day before the fourth calendar day and send the recommendation as soon as practicable on the first working day that follows. For example, if a detention order is issued on a Wednesday, the fourth calendar day would be the following Sunday. Because Sunday is a non-working day, we would advise the DOJ of our plans to recommend a seizure action on Friday and would send the recommendation as soon as practicable on the following Monday.

For purposes of this proposed section, extenuating circumstances include, but are not limited to, instances when the results of confirmatory testing or other evidentiary development require more than 4 calendar days to complete.

Proposed § 1.383 is designed to accelerate the procedure for seizure recommendations and takes into account the 7-day timeframe in the proposed definition of ''perishable food.'' As noted previously in section III.B.7 of this document, we have focused our implementation of this provision of section 303 of the Bioterrorism Act on seizure recommendation procedures. Use of injunctive relief may be appropriate in some circumstances involving detained perishable foods. However, expedited procedures for instituting injunction actions would not accelerate the judicial control of a particular violative article of perishable food as much as expedited procedures for seizure actions.

We invite comment on this or other procedures that would address concerns about expedited enforcement actions with respect to perishable food.

8. When Does a Detention Order Terminate? (Proposed § 1.384)

Under proposed § 1.384, an authorized FDA representative will issue a detention termination notice releasing the detained article of food if FDA decides to terminate a detention order or the detention period expires. FDA will issue the detention termination notice to any person who received the detention order or that person's representative. FDA also will remove, or authorize the removal of, the required labels or tags attached under proposed § 1.382. If FDA fails to issue a detention termination notice and the detention period expires, the detention order is deemed to be terminated.

C. How Does FDA Order a Detention?

1. Who Approves a Detention Order? (Proposed § 1.391)

Proposed § 1.391 requires that an authorized FDA representative approve a detention order. As defined in proposed § 1.377, an ''authorized FDA representative'' is an FDA District Director in whose district the detained article of food is located or an FDA official senior to such director. For example, an RFDD is an FDA official senior to an FDA District Director. This is consistent with the approval requirements found in section 303 of the Bioterrorism Act. We are proposing that if prior written approval of a detention order is not feasible, prior oral approval must be obtained and confirmed in writing as soon as possible. We believe allowing for oral approval of a detention followed by written confirmation allows for efficient implementation of the administrative detention provisions.

For example, the investigator may be at a manufacturing plant located a great distance away from the district office and may determine that a detention is warranted. Instead of losing valuable time driving back to the district office to get a written signature in cases where a fax machine is not close by, the investigator may telephone the authorized FDA representative to get an oral approval. The authorized FDA representative would subsequently confirm the oral approval in writing by sending written confirmation to the investigator. In other circumstances where there is risk of the product moving to another location, we would want to detain the product immediately and an oral approval of the detention order may be prudent, followed by confirmation in writing. These examples illustrate some situations where oral approval may be necessary, but do not constitute an all inclusive list.

2. Who Receives a Copy of the Detention Order? (Proposed § 1.392)

Proposed § 1.392(a) requires FDA to issue the detention order to the owner, operator, or agent in charge of the place where the article of food is located. If the owner of the article of food is different from the owner, operator, or agent in charge of the location of the food, FDA must provide a copy of the detention order to the owner of the article of food if the owner's identity can be determined readily.

Proposed § 1.392(b) would subject common carriers of articles of food to these administrative detention provisions. If FDA issues a detention order for an article of food located in a vehicle or other carrier used to transport the detained article of food, FDA would be required to provide a copy of the detention order to the shipper of record and the owner and operator of the vehicle or other carrier, if FDA can determine their identities readily.

3. What Information Must FDA Include in the Detention Order? (Proposed § 1.393)

Proposed § 1.393(a) requires FDA to issue the detention order in writing, signed and dated by the officer or qualified employee of FDA who has credible evidence or information indicating that such article of food presents a threat of serious adverse health consequences or death to humans or animals. The written detention order serves as notice of the detention and provides notice that the persons with ownership rights to the detained article of food have the right to request an informal hearing.

Proposed § 1.393(b) requires the detention order to include the following information:

1. The detention order number;
2. The date and hour of the detention order;
3. Identification of the detained article of food;
4. The period of the detention;
5. A statement that the article of food identified in the order is detained for the period shown;

6. A brief, general statement of the reasons for the detention;

7. The address and location where the article of food is to be detained and the appropriate storage conditions;

8. Any applicable conditions of transportation of the detained article of food;

9. A statement that the article of food is not to be consumed, moved, altered, or tampered with in any manner during the detention period, unless subject to a limited conditional release under proposed § 1.381;

10. The text of section 304(h) of the act and §§ 1.401 and 1.402 of this chapter;

11. A statement that any informal hearing on an appeal of a detention order must be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in proposed § 1.403;

12. The mailing address, telephone number, e-mail address, and fax number of the FDA district office and the name of the FDA District Director in whose district the detained article of food is located; and

13. A statement indicating the manner in which approval of the detention order was obtained, i.e., orally or in writing.

D. What Is the Appeal Process for a Detention Order?

1. Who is Entitled to Appeal? (Proposed § 1.401)

Under proposed § 1.401, any person who would be entitled to be a claimant for such article of food, if seized under section 304(a) of the act, would be able to appeal a detention order. Procedures for establishing entitlement to be a claimant for purposes of section 304(a) of the act are governed by Supplemental Rule C(6)(a) to the ''Federal Rules of Civil Procedure.''

2. What Are the Requirements for Submitting an Appeal? (Proposed § 1.402)

Proposed § 1.402 describes the requirements for submitting an appeal. As required by section 303 of the Bioterrorism Act, as part of your appeal, you may request an opportunity for an informal hearing. Proposed § 1.402(a) will require you to submit your appeal in writing to the FDA District Director in whose district the detained article of food is located using the contact information provided in the detention order. We propose to allow you to submit your appeal in person, by mail, e-mail, or fax.

The timeframe for filing an appeal is determined by whether the detained article of food is perishable or nonperishable. If the detained article of food is perishable, as defined in proposed § 1.377, you would be required to file your appeal and request for a hearing within 2 calendar days of receipt of the detention order.

If the article of food subject to the detention order is nonperishable, you would be required to file a notice of intent to request a hearing within 4 calendar days of receipt of the detention order. The notice of intent would enable the agency to determine whether resources should be allocated to preparing for a regulatory hearing. If you do not file a notice of intent by day four, you do not receive a hearing. However, without filing a notice of intent by day four, you may still file an appeal without a hearing request. Whether or not you are requesting a hearing, your appeal involving a detained nonperishable food must be filed within 10 calendar days of receipt of the detention order.

We are using calendar days for the bifurcated deadlines for filing appeals to provide the most expeditious procedure for perishable food, and to provide a consistent approach for counting days. We are asking for comment on whether there are other ways we should be counting days for filing appeals, while adhering to the statutory deadline of 5 days for FDA to issue a decision on appeal (for both perishable and nonperishable food).

Proposed §1.402(b) provides that your request for an appeal must include a verified statement identifying your ownership or proprietary interest in the detained article of food. Under ''Federal Rules of Civil Procedure,'' Supplemental Rule C(6)(a), a person who asserts an interest in or right against property that is the subject of an action must file a verified statement identifying the interest or right. The meaning of ''verified statement'' under Supplemental Rule C(6)(a) is governed by the local federal district court rules in which the detention takes place, and usually means that the statement must be accompanied by an oath or affirmation attesting to the statement's veracity.

Proposed § 1.402(c) provides that the appeal process would terminate if FDA institutes either a seizure action under section 304(a) of the act or an injunction under section 302 of the act regarding the detained article of food.

Proposed § 1.402(d) describes the requirements for requesting an informal hearing as part of the appeals process. Your request for a hearing must be in writing and be included with your appeal. You may appeal a detention without requesting an informal hearing; however, if you want an informal hearing, you must include your request when you file your appeal. This proposed section describes the timeframes for holding the hearing if FDA grants your request for an informal hearing (see § 16.26 regarding denial of hearing). If the detained article of food is perishable, the hearing would be held within 2 calendar days after the date the appeal is filed. If the detained article of food is nonperishable, the hearing would be held within 3 calendar days after the date the appeal is filed. The quick timeframes for holding the hearing are necessary to ensure that FDA can adhere to the statutory requirement to issue a decision on appeal within 5 calendar days after the appeal is filed. FDA notes that under this proposal, the timeframes for perishable and nonperishable appeals will not be significantly different in instances where an appeal is filed immediately upon receipt of a detention order. For example, if you file an appeal and request for a hearing on the same calendar day (day one) the detention is ordered for a perishable food, the hearing would be held by calendar day three, and the decision on appeal could be issued as early as calendar day three but no later than calendar day six. If a nonperishable food was detained in the same example, the hearing would be held by calendar day four, and the decision on appeal could be issued as early as calendar day four but no later than calendar day six.

We are requesting comment on the timeframes for holding the informal hearing.

3. What Requirements Apply to an Informal Hearing? (Proposed § 1.403)

If FDA grants a request for an informal hearing on an appeal of a detention order, FDA would conduct the hearing in accordance with part 16, with the following exceptions:

- The detention order under proposed § 1.393, rather than the notice under § 16.22(a) of this chapter, would provide notice of opportunity for a hearing under this section and would be part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter.
- A request for a hearing under this section must be addressed to the FDA District Director in whose district the detained article of food is located in accordance with proposed § 1.402(a).
- The provision in § 16.22(b) of this chapter, providing that a person not be given less than 3 working days after receipt of notice to request a hearing, does not apply to a hearing under this

subpart. Rather, the timeframes in proposed § 1.402(a) apply.

• The provision in § 16.24(e) of this chapter, stating that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing, does not apply to a hearing under this subpart. Instead, the timeframes in proposed § 1.402(c) apply.

• Proposed §1.406, rather than § 16.24(f) of this chapter, describes the statement that will be provided to an appellant where a detention order is based on classified information.

• Proposed § 1.404, rather than § 16.42(a) of this chapter, describes the FDA employees, i.e., RFDDs or other officials senior to District Directors, who preside at hearings under this subpart.

• Under proposed § 1.403(f), the presiding officer may require that a hearing conducted under this section be completed within 1 day, as appropriate.

• Ordinarily under part 16 hearing procedures, the presiding officer issues a report and recommended decision and the Commissioner of Food and Drugs issues a final decision. However, under proposed § 1.403(g), the presiding officer will issue the final agency decision.

As described previously, the informal hearing requirements in part 16 state that its procedures are to be used when the act or FDA regulations provide for an opportunity for a hearing and no specific hearing regulations exist (see § 16.1(b)). Section 303 of the Bioterrorism Act provides for an informal hearing opportunity, but does not provide specific provisions for the informal hearing. In this proposed rule, we are applying part 16 procedures modified by the noted exceptions, which is consistent with § 16.5(b).

4. Who Serves as the Presiding Officer at an Informal Hearing? (Proposed § 1.404)

Proposed § 1.404 requires the FDA RFDD, or other official senior to a District Director, to act as the presiding officer of an informal hearing on an appeal of a detention order. As presiding officer, the RFDD would issue the decision on appeal. Because a detention must be approved at the District Director level, we believe it is appropriate that appeals of those decisions should be handled by persons in positions senior to the District Directors.

The presiding officer may be an RFDD from a region other than the one in which the detained article of food is located, or another official senior to a District Director.

5. When Does FDA Have to Issue a Decision on an Appeal? (Proposed § 1.405)

Proposed § 1.405 describes when FDA must issue a decision on an appeal. Proposed § 1.405(a) requires the presiding officer to issue a decision confirming or revoking the detention order within 5 calendar days after the appeal is filed. If FDA fails to provide an opportunity for a hearing, or fails to confirm or terminate the detention order within the 5-day period, the detention order is deemed terminated. While the Bioterrorism Act does not define the meaning of ''an opportunity for an informal hearing,'' we interpret this phrase to mean the FDA gives notice of the opportunity for a hearing (see also proposed § 1.403(a), which states that the detention order provides notice of opportunity for a hearing). Under this interpretation, a failure to provide an opportunity for a hearing means a failure to provide you with notice of your opportunity to request a hearing. This provision is consistent with requirements of section 303 of the Bioterrorism Act.

Proposed § 1.405(b) would allow you to appeal the detention order without a request for an informal hearing. Where you appeal without requesting a hearing, the presiding officer is still required to issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to issue a decision within the 5-day period, the detention order is deemed terminated.

Proposed § 1.405(c) states that if you appeal a detention order and request an informal hearing and your hearing request is denied, the presiding officer is still required to issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to issue a decision within the 5-day period, the detention order is deemed terminated.

Proposed § 1.405(d) states if the presiding officer confirms a detention order, the article of food would continue to be detained until FDA terminates the detention order under proposed § 1.384 or the detention period expires under proposed § 1.379, whichever occurs first.

Proposed § 1.405(e) states that if the presiding officer terminates a detention order, or the detention period expires, FDA would be required to terminate the detention order as specified under proposed § 1.384 (i.e., FDA would be required to issue a detention termination notice releasing the article of food).

Proposed § 1.405(f) states that confirmation of a detention order by the presiding officer is considered a final agency action for purposes of section 702 of title 5, United States Code (5 U.S.C. 702).

6. How Will FDA Handle Classified Information in an Informal Hearing? (Proposed § 1.406)

FDA expects that consistent with responding to bioterrorist threats, there may be instances where the credible evidence or information supporting a detention order consists of Classified National Security Information (''classified information''). Protection of information critical to our nation's security is a priority (Executive Order 12958, April 17, 1995). While mindful of our duty to protect our national security interest, we are also mindful of our obligation to provide a fair, expeditious, and impartial hearing (see § 16.60 regarding hearing procedure). Proposed § 1.406 provides that FDA will not release classified information. However, if the presiding officer may do so, consistent with safeguarding both the information and the source, the presiding officer will give you notice of the general nature of the information and an opportunity to offer opposing evidence or information. If classified information was used to support the detention, then any confirmation of such detention will state whether it is based in whole or in part on that classified information.

Given the events of September 11, 2001, and the need to quickly respond to actual or threatened bioterrorist attacks, we are contemplating the development of general regulations that address handling classified information on an agency-wide basis for all the products regulated by FDA. We believe, though, that we should go forward with the current proposal in this context at this time.

IV. Conforming Amendment to 21 CFR Part 16

We propose to amend § 16.1(b)(1) to include section 304(h) of the act relating to the administrative detention of food for human or animal consumption to the list of statutory provisions under which regulatory hearings are available.

V. Analysis of Economic Impact

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies

to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as a significant regulatory action if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. Executive Order 12866 also considers a regulatory action significant if it raises novel legal or policy issues. The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866, although it is not economically significant.

Need for Regulation

Section 303 of the Bioterrorism Act (Public Law 107–188), gives FDA expanded authority to prevent the distribution of any article of food for which we have credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. Previously, if we received credible evidence or information indicating that an article of food presented a threat of serious adverse health consequences or death to humans or animals, we would typically have taken one of the following actions: (1) Requested a voluntary recall of the suspected product; (2) developed enough evidence to move directly to seize the food; or (3) referred the matter to the appropriate State authority for most cases involving purely intrastate commerce. Thus, Congress' expansion of our authority to allow administrative detention of food permits us to immediately detain food in commerce, which provides an added measure to ensure the safety of the nation's food supply.

Reason for Regulation

FDA is proposing this regulation to improve food safety. Food safety is mostly a private good. Establishments have powerful incentives to ensure that the ingredients they purchase are not contaminated and that their production processes are protected from unintentional and intentional contamination. Deliberate (intentional) contamination of food linked to a particular product or plant—particularly if the plant is considered negligent—would be extraordinarily costly to a firm. Indeed, the private incentives to avoid deliberate contamination should be similar to the private incentives for food safety. Deliberate food contamination events nonetheless differ from ordinary outbreaks of foodborne illness in that they are more likely to be low probability events with severe public health consequences.

Although private incentives lead to the private efforts to protect against deliberate contamination at the plant level, there are external effects associated with privately produced protection. The economic incentives for firms to engage in food safety activities largely hinges on the ability of consumers to identify and avoid products associated with the responsible party. However, firms can change both their own names and the names of their products, and can also change owners and managers. Therefore, it may be quite costly for consumers to obtain the information that would allow them to avoid products associated with the responsible party. Moreover, some firms might be infiltrated by those who wish to launch attacks on food safety, or might even have been formed by those having that end in mind. Such firms would not be responsive to normal economic incentives to provide food safety.

The events of September 11, 2001, led Congress to conclude that there should be a regulatory mechanism to temporarily remove from commerce potentially violative food that presents a threat of serious adverse health consequences or death to humans or animals, and store it under an appropriate level of security until we can investigate the potential threat and evaluate whether to initiate judicial enforcement action and, if appropriate, initiate such action. This proposed regulation implements this mechanism.

Regulatory Options

We considered several regulatory options or alternatives as follows in developing this proposal:

Option One: Establish a regulatory framework for administratively detaining food, with expedited procedures for instituting certain enforcement actions involving perishable food (i.e. take the proposed action);

Option Two: Take the proposed action, but change the definition of perishable food, the maximum timeframe for administrative detention of perishable food, or both;

Option Three: Take the proposed action, but define the level of security we require for transportation and storage;

Option Four: Issue regulations only to establish expedited procedures for instituting certain enforcement actions involving perishable food (i.e. limit the action to the regulations required by section 303 of the Bioterrorism Act).

We request comments on these options, as well as suggestions on other regulatory options that we should consider. We will address comments on this analysis in the analysis of the final rule.

Baseline: The situation before Congress passed the Bioterrorism Act

Usually, we designate the option of taking no regulatory action as the baseline. We then compare the costs and benefits of the various regulatory options to the current regulatory state of affairs. However, for this rule, we chose the situation that existed before Congress enacted the Bioterrorism Act as the baseline. We chose this baseline rather than the current regulatory state of affairs because our authority to administratively detain food under the Bioterrorism Act already exists, regardless of whether we now promulgate regulations setting out the procedures we will follow when we detain food.

Therefore, in order to analyze the impact of Congress giving us the authority to administratively detain food, we needed to specify a baseline that predated our having received that authority. By convention, we do not attribute costs or benefits to the baseline, per se, but instead capture the impacts of the regulation by comparing the costs and benefits of the other options to the baseline. Prior to Congress passing the Bioterrorism Act, we had other enforcement options available to us in those situations in which we can now use administrative detention, that is, in which we receive credible evidence or information that an article of food presents a threat of serious adverse health consequences or death to humans or animals. We will discuss those enforcement actions as part of the baseline in the following analysis.

In addition, we do not discuss the option of taking no regulatory action as one of the non-baseline options, because that option is not legally feasible. Option Four (establish expedited procedures for instituting certain enforcement actions involving perishable food only) most closely resembles the option of taking no regulatory action, because in that option we would limit ourselves to only the regulatory action that Congress required us to take in the Bioterrorism Act.

Option One: Establish a regulatory framework for administratively

detaining food, with expedited procedures for instituting certain enforcement actions involving perishable food (i.e. take the proposed action)

In the proposed action, we establish a regulatory framework for administratively detaining food.

Costs

The primary costs of the proposed rule arise from differences between administrative detention and other enforcement actions with respect to the following: (1) Cost of transporting and storing food, if necessary; (2) cost of canceling previously scheduled transportation and storage of the affected food when we remove it from commerce, and rescheduling transportation and storage if we later cancel the detention order and release it back into commerce; (3) loss of product value over the detention period, if we later find the food is not violative; and (4) cost of participating in appeals hearings and other enforcement activity.

To analyze the costs of the proposed rule, we first estimate how many times we might use administrative detention. We then estimate the proportion of cases in which we might administratively detain food that we later determine to be not violative. We need to estimate this percentage because we estimate the loss of product value over the detention period for food that we later find to be not violative. (We do not estimate the loss of product value for violative food, because we assume that the violation, not our action, reduces the value of that food.) We then estimate how costs would change if we substituted an administrative detention action for other enforcement actions. We look at the change in costs relative to the baseline of taking these other actions because we probably would have taken some type of enforcement action if we had received the type of information that would allow us to use administrative detention. In other words, we analyze the cost of administrative detention actions in terms of the costs over and above those that would have been associated with the enforcement actions that we would otherwise have taken. We then multiply the changes in costs by the number of times we might substitute an administrative detention action for the other enforcement actions.

Estimate of number of times we might use administrative detention per year

We do not know how often we will receive credible evidence or information that an article of food presents a threat of serious adverse health consequences or death to humans or animals that would allow us to administratively detain food. However, if we had received credible evidence or information that an article of food presented a threat of serious adverse health consequences or death to humans or animals before Congress granted us authority to take administrative detention actions, we would probably have taken one of the following three actions: (1) Requested a voluntary recall of the suspected product; (2) moved directly to seize the food; or (3) referred the matter to State authorities. We specify moving directly to seize food because we could also seize food after taking some other enforcement action, including administrative detentions. To avoid having to describe streams of enforcement actions, we have simplified the situation into two phases, a ''preliminary phase,'' in which we take some action to detain the food in order to investigate it, and a ''final phase'' in which we take some final action such as seizing the food or referring the matter to State authorities.

We base our estimate on only these three actions because we believe the situations that lead to these types of actions are the most similar to the situations that may lead to administrative detention. Thus, we assume that any administrative detention would replace issuing class I recalls, moving directly to seizure, or referring the matter to State authorities for most cases involving purely intrastate commerce. If we instead assumed that we might substitute administrative detention actions for other types of enforcement actions, including other actions that we subsequently follow with seizure actions, then our estimate of the number of administrative detentions per year could be significantly larger. Examples of other types of enforcement actions include detentions without physical examination (DWPE) and requests to States to embargo food. We assume that the number of administrative detentions might include 0 to 100 percent of the number of class I recalls and instances in which we moved directly to seize food, and 0 to 10 percent of the number of times we referred matters to State authorities. In all cases, we based the low end of the range on the fact that we do not know if we would have used administrative detention, even if we had the authority to do so, and the criteria for using administrative detention had been met. Analyzing all the factors that would lead us to choose one enforcement action over another is beyond the scope of this analysis. We chose 100 percent as the high end of the range for class I recalls because the criteria for class I recalls is quite similar to the criteria for administrative detention. We chose 100 percent as the high end of the range for instances in which we move directly to seize food as a practical expedient because the small number of actions implies that such information would have had little or no impact on our cost estimates. We chose 10 percent as the high end of the range for State referrals because our experience with those actions suggests that only about 10 percent of recent referrals involved concerns or situations that would have met the criteria for administrative detention. The other referrals do not appear to meet the criteria for administrative detention.

In fiscal year (FY) 2002, we initiated 184 class I recalls involving food that posed a risk of serious adverse health consequences or death to humans or animals. In the same year, we initiated 16 seizures that may have involved food products that posed hazards to human or animal health. In the last 12 months, we estimate that we referred 234 of such matters to State authorities.

These numbers are repeated in table 1 of this document. Based on this information, we estimate that we might administratively detain food 0 to 223 times per year.

TABLE 1.—SUBSTITUTIONS PER YEAR

Action	Estimated Number of Substitutions of Administrative Detention for Other Enforcement Actions per Year
Class I recalls	0 to 184
No preliminary action (move directly to seizure)	0 to 16
No preliminary action (refer matter to State authorities)	0 to 23
Total	0 to 223

Estimate of the proportion of cases in which the food subject to administrative detention turns out to be not violative

Some of the costs that we will discuss later are only relevant if we eventually determine that food that we have administratively detained is not violative. We do not know the proportion of cases in which we might administratively detain food that we later determine to be not violative. This rate depends on the type of information we receive, and the level of risk aversion we adopt when we apply the criteria allowing us to use

administrative detentions, including ''credible evidence or information'' and ''threat of serious adverse health consequences or death to humans or animals.'' If we only administratively detain food when we are certain or nearly certain that it is violative, then we may eliminate administrative detention as an enforcement option for some food that is violative. However, if we administratively detain food when we are less certain that it is violative, then we will increase the rate at which we administratively detain food that we later determine is not violative.

One way of addressing the proportion of cases in which we might administratively detain food that we later determine to be not violative is to look at data from the detention and release of imported food. However, this data cannot be narrowed to situations where we have detained or prepared to detain food and then later determined that the food was not violative. An import detention is different from administrative detention in that imports can be detained for reasons other than adulteration or misbranding. These other reasons give rise to a large percentage of detentions in which the food is found not to be violative. For instance, an import can be detained because the product is coded in the OASIS (Operational and Administrative System for Import Support system) system as a low acid canned food but the importer did not supply the food canning establishment number. The OASIS system is a national database on imports, and related enforcement activities and findings.

In the first three quarters of 2002, we released 48 percent of the shipments of human and animal food that we detained, excluding the shipments that we released because the firm reconditioned the food. The percentage of import shipments released includes all releases recorded in the OASIS system. These data include releases from detentions resulting from:

- DWPE notices;
- Routine FDA field sampling assignments;
- Incorrect or incomplete information provided about the product; and
- Imports released with comment, which means the product technically is misbranded or adulterated but we exercise enforcement discretion.

Because of the factors listed previously, and because import detentions may be based on a lower level of information than that required for an administrative detention, we cannot directly impose these numbers on administrative detentions. Rather, 48 percent is an upper limit that will exceed the nonviolative percentage of administratively detained food.

Another way of addressing this issue is to look at the proportion of enforcement actions against nonfood products that involved products that we later determined were not violative. We have had authority to administratively detain medical devices since 1976. During that time, we have not administratively detained any products that we later found to be not violative. This suggests that the rate at which we administratively detain food that is not violative may also be quite low, because in both cases we would be using similar administrative detention procedures. However, the medical device and food contexts may differ with respect to a number of potentially relevant issues, such as the type and amount of products on the market, the types of problems associated with those products, and the type and level of information that we receive on those problems.

Based on this information, we estimate that 0 to 48 percent of the food that we administratively detain will later turn out to be not violative.

Transportation

Under the proposed rule, we might require a firm to transport food that we administratively detain to a storage facility that is both secure and capable of providing the proper conditions for storing that type of food. In other cases, we might allow firms to hold the food in place, but require them to take various other actions to secure the food, such as physically segregating it, locking the area in which they store it, and possibly posting guards to monitor the area in which they store it. We will determine whether or not to require a firm to transport administratively detained food to another storage facility, and to take other actions to secure that food, on a case-by-case basis.

An example of where transporting detained food might be problematic would be the case of large storage grain bins located at private elevators and farms that hold grain. These bins typically hold several hundred tons per bin. It would be costly to transport grain to another holding area. In addition, transporting contaminated grain might spread biological or chemical agents because of the generation and dispersal of dust from the grain as we remove it from the bin and transport it to another location. In this case, it could be preferable to allow the product to be stored in place, possibly with the addition of onsite security.

We do not have sufficiently detailed information on past enforcement actions to estimate the proportion of administrative detentions in which we might require transportation or any other activity. Therefore, we assume that we would require firms to transport food to a secure facility and store them there in 0 to 100 percent of administrative detention actions. To simplify the analysis, we tentatively assume that the estimated costs of transporting food to a secure facility and storing it there are equal to or greater than the costs of storing the food in place and taking any of the other actions that we might require under our administrative detention authority, except posting additional guards, which we analyze in the discussion of Option Three (take the proposed action, but define the level of security we require for transportation and storage). As we discuss in the section on Option Three, the estimated cost of providing one additional security guard for onsite storage is somewhat higher than the estimated cost of transporting food to a secure facility. Therefore, we have not discussed the cost of providing an additional security guard as part of this option. Nevertheless, providing an additional security guard and storing food in place is consistent with taking the proposed action, and we may take that action in some cases.

The cost of transporting food varies along a number of dimensions, including the following: (1) Type of conveyance used, (2) distance traveled, (3) level of security, (4) type and amount of food involved, and (5) number of trips required. These considerations are interrelated. For example, the appropriate type of conveyance might depend on the level of security, the distance to be traveled, and the amount of food involved. Similarly, the distance to be traveled would depend, in part, on what type of facility meets our security requirements.

Firms may transport food via truck, rail, air, or ship. Based on the distance to be traveled, the level of security we might require, and the type and amount of food involved, we tentatively assume that firms would usually move administratively detained food by truck.

We also assume that when we require firms to transport food to a ''secure storage facility,'' we will usually interpret that term to mean a bonded or third party public warehouse. We assume that these warehouses would provide proper storage conditions to maintain the safety and wholesomeness of the food. Bonded warehouses, refrigerated warehouses, and most types of third-party public warehouse facilities are readily available around ports of entry into the United States. Most metropolitan areas have an international airport that serves as a port

of entry into the United States, and will, therefore, have a variety of warehouses available. Therefore, we assume that the distance that we would require firms to transport administratively detained food would normally be no farther than the distance to the nearest metropolitan area. Firms might undergo additional transportation costs if we later cancel the administrative detention order and release the food back into commerce, because the secure facility might not be as convenient to the subsequent destination as the original location. Therefore, we calculate the transportation costs associated with food that we later release on the basis of round trip travel between its original location and the secure storage facility.

Transportation costs would depend, in part, on the security measures that we direct firms to take. We do not define those measures in this proposed rule. Instead, we will determine the relevant level of security and types of security measures needed on a case-by-case basis. We tentatively assume that a normal or average level of security for transportation of food would be the level associated with bonded or third party carriers. We believe using these types of carriers rather than a firm's own transportation system could provide some additional security because the owner of the bonded or third-party carrier might have a greater financial incentive to monitor and maintain custody of the food than do the owners of the food. In some cases, we might require higher security. In other cases, we might require lower security, such as that associated with a firm's own transportation system.

The cost of transporting food varies widely with the type and quantity of food. Some food requires specialized trucks, such as bulk liquid or refrigerated carriers. We base our estimate of the average transportation costs on the average rates for transporting the ''most usual loads'' of various fresh fruits and vegetables as reported in the ''Agricultural Marketing Service's Fruit and Vegetable Truck Rate Report'' for the week ending November 19, 2002 (Ref. 1). These loads of fresh fruits and vegetables do not require specialized trucks. We think that average transportation costs should be similar because the proportion of food that requires specialized trucks is relatively small. However, we request comment on this assumption, and on the cost of specialized transportation. We assume there would be suitable storage facilities in the nearest major metropolitan area. However, we do not know the average distance from any randomly chosen point in the United States to the nearest metropolitan area. Therefore, we tentatively assume that the distance from any location at which we might detain food to the nearest metropolitan area would be between 30 and 200 miles. Most of the trips in the trucking report were much longer than 200 miles. However, the report listed 10 trips under 300 miles. The trucking report included both a low cost and a high cost estimate. Using these estimates gives an average cost per mile for the 10 trips under 300 miles of between $4.26 and $5.13. The actual cost per mile varied from a high of $23.91 for the high cost estimate for the shortest trip (23 miles) to $1.93 per mile for the low estimate for an intermediate length trip (243 miles). Costs per mile are higher for shorter trips because some costs are probably fixed and do not increase with mileage. We use the range for the average cost per mile for all trips under 300 miles because we have insufficient information to estimate a distribution of trips by distance. Based on this assumption, we estimate that the average transportation cost per truckload will be between approximately $100 and $1,000.

In order to use these transportation rates, we need to know the average amount of food that we would administratively detain. The amount of food that we administratively detain could be anything from a few packages, to a lot, a shipment, or a production run. The amount of food involved in class I recalls and seizure actions has ranged from 100 pounds or less, in the case of some seizure actions, to millions of pounds, in the case of some class I recalls. Therefore, we estimate that we will administratively detain between 0 and 1 million pounds of food per administrative detention. We request comments on this assumption.

To apply the information on transportation costs, which was based on the most usual load of produce (as defined by the ''Agricultural Marketing Service's Fruit and Vegetable Truck Rate Report''), to our assumption about the amount of food that we might administratively detain, which we expressed in pounds, we need to estimate the average weight in pounds of the most usual loads of produce. One way to do this is to look at the average weight of lines of imported produce, and to assume that the size of an average line of produce is comparable to the size of the most usual load of produce. A line in this context is the unit by which we record information on imported food; it does not refer to a product line. We base the assumption relating the size of the line of produce to the most usual load of produce on the fact that most imported produce arrives by truck, so that the typical unit of imported produce probably corresponds roughly to a usual truckload of that produce. We request comments on this assumption.

In 2001, firms imported approximately 22.6 billion pounds of 48 common types of fresh produce into the United States (Ref. 4). We extrapolated data on the number of lines in the OASIS database for the first three quarters of FY 2002 for all product categories that appear relevant to fresh produce to estimate that the total number of lines will be approximately 1.5 million by the end of FY 2002. If the amount of imports in 2001 were similar to that for FY 2002, then the average line would be about 15,000 pounds. Therefore, we assume that the most usual load of produce would be about the same size as the average line of imported produce, or 15,000 pounds. We have insufficient information to estimate the weight of the average line for any other type of food. Therefore, we assume that the average truckload across all types of food is about 15,000 pounds. Under this assumption, each administrative detention may involve transporting approximately 0 to 67 truckloads of food.

Additional transportation costs might arise if we conditionally released food that we administratively detained, and firms moved the conditionally released food to another location. We have not included these costs because of the voluntary nature of these limited conditional releases. A firm would not request a limited conditional release unless the benefits of doing so outweighed the costs. Therefore, any increase in transportation costs would be at least offset by some form of cost savings. If we were to analyze the impact of the availability of these limited conditional releases, then our estimate of the costs associated with this proposed rule would be somewhat lower. However, the impact would probably be small, because we do not expect many requests for limited conditional release.

We request comments on all assumptions relating to transportation costs, including but not limited to the average amount of food that we might administratively detain, the average amount of food per truck load or per load of other conveyance, the likelihood that firms will use different types of conveyances (i.e. trucks, airplanes, trains, and ships), the costs of using various types of specialized conveyances, and the distances that firms may need to transport food.

As explained earlier in this analysis, we are analyzing the cost of

administrative detention actions relative to the baseline of taking the enforcement actions we would have taken prior to having received authority to take administrative detention actions. Therefore, only the costs that go beyond the costs of those other enforcement actions are relevant here. We assume there would be no change in transportation costs if we substituted an administrative detention action for a class I recall, because firms probably already transport food as part of such a recall.

We considered the costs of transportation under class I recalls to be part of the baseline costs, even though such recalls are voluntary, because we have some influence over those decisions. We have influence over those decisions because we could publicize the fact that we requested a firm to recall a product, which might have consequences for that firm's profits. Therefore, those decisions are not purely private market decisions. As such, it is reasonable to classify the costs associated with those recalls as social costs that are comparable to the social costs associated with administrative detention actions for purposes of determining baseline costs. If we did not treat these costs as social costs, then substituting administrative detention for class I recalls would generate additional social costs related to transporting food.

Moving directly to a seizure action or referring a matter to State authorities does not involve any transportation costs prior to the seizure action or referral. Therefore, all transportation costs associated with an administrative detention are relevant in the case of an administrative detention that replaces a case of moving directly to a seizure action or a referral to State authorities. Any transportation costs associated with the actual seizure or State action would not be relevant in this context, because administrative detentions may be followed by seizure actions or State actions, so any transportation associated with the seizure action or State action would take place irrespective of whether it was preceded by an administrative detention or not.

We present transportation costs in table 2 of this document. We calculated these figures by multiplying the number of truckloads that we estimated would be involved in an administrative detention (0 to 67) by the number of times we might use administrative detention in place of class I recall requests, cases of moving directly to seizure, or referring a matter to State authorities. The number of one way trips includes return trips, which we calculated by multiplying the number of trips to secure storage facilities by the estimated percentage of cases in which we might terminate a detention order and allow food back into commerce (0 to 48 percent). In table 2, we estimate the range of additional trips to secure facilities to be 0 to 1,587. The number is based on 0 to 16 seizures (in row 1), a maximum of 67 truckloads per seizure, and a maximum of 48 percent additional trips for those products cleared to enter commerce. We calculate the maximum number of trips as: (16 x 67) + (0.48 x 16 x 67)= 1,587. Again, estimated costs are higher for administrative actions that replace cases of moving directly to seizure actions or referring matters to States than for administrative actions that replace class I recalls because we are using the costs of those other actions as the baseline, and class I recalls already involve transportation, while cases of moving directly to seizure actions or referring matters to States do not.

TABLE 2.—ANNUAL TRANSPORTATION COSTS

Action	Number of Actions (see table 1)	Additional One Way Trips per Year, in Truckloads	Cost per one Way Trip	Total Transportation Cost (in millions)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	0 to 1,587	$100 to $1,000	$0 to $2
Administrative Detention that Replaces Class I Recall	0 to 184	0	$100 to $1,000	$0
Administrative Detention that Replaces Referral to States	0 to 23	0 to 2,323	$100 to $1,000	$0 to $2
Total				$0 to $4

Storage

The cost of storing food in secure storage facilities depends on the following factors: (1) Level of security of the facility; (2) type of food; (3) length of time the food is stored; (4) amount of food; and (5) miscellaneous factors, such as geographic location of facility, whether the customer is a regular or repeat customer, volume discounts, etc.

We do not define the security requirements for storage facilities in this rule. Instead, we will determine the relevant level of security on a case-by-case basis. We tentatively assume that the normal or average level of security that we would require is the level associated with bonded or third party public warehouses. Using these warehouses should provide some additional security because the owner of the food relinquishes custody of the food to the warehouse. In some cases, we might require higher security, such as that associated with secure government storage facilities, for example, Customs Examination Stations. In other cases, we might require lower security, such as that associated with a firm's own warehouses. We understand from a discussion with a representative of the International Association of Refrigerated Warehouses that the cost difference between bonded and nonbonded public warehouses is probably quite small (Ref. 2). Therefore, we use the same storage costs for both bonded and nonbonded warehouses.

Storage costs vary with the type of food being stored. However, we were unable to find data on average storage rates for different types of food under different conditions (Ref. 2). One cold storage facility gave us food storage rates that varied from $0.0002 to $0.0006 per pound per month for a range of food types (Ref. 3). Rates for food that does not need to be refrigerated might be lower than the lower bound of the rates for cold storage. However, we do not have information on these rates, and we assume that these rates will fall in the same range. The same source listed

handling rates per shipment of $0.01 to $0.02 per pound. We request comments on these rates. These rates imply storage costs of $0 to $600 per day per administrative detention, and handling rates of $0 to $20,000 per administrative detention, based on a shipment size of 0 to 1 million pounds (67 truckloads per shipment x 15,000 pounds per truckload).

We estimate overall storage costs based on the handling fee per pound, the storage costs per pound per day, the amount of food we might administratively detain, and the change in the maximum number of days that we might require firms to store the food. We assume that there would be no increase in storage costs if we substituted an administrative detention action for a class I recall, because firms probably already store food as part of such a recall. There is no storage associated with taking no preliminary enforcement action prior to a seizure action or a referral of a matter to a State authority. Therefore, any storage associated with an administrative detention would be an additional cost in comparison to moving directly to seizure or referring a matter to a State authority.

Administrative detention involves a maximum storage time of up to 30 days. The actual amount of time that firms would store detained food depends on whether and when they appeal the administrative detention order. Firms would appeal if they expected the costs of doing so would be less than the costs of storing the food until we completed our investigation, or until the detention period expired. We have insufficient information to estimate the percentage of administrative detentions that firms would appeal. Therefore, we use a maximum of 30 days additional storage time for all administrative detentions. We do not know how long firms store food that they voluntarily recall before reconditioning or destroying the food. We tentatively assume that the storage time associated with class I recalls would be similar to the storage time associated with administrative detention.

We provide estimates of annual storage costs, rounded to the nearest million dollars, in table 3.

TABLE 3.—ANNUAL STORAGE COSTS

Action	Number of Actions	Change in Days Storage per Action	Cost per Day (based on average shipment)	Handling Cost per Action	Change in Total Storage Cost (in millions)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	0 to 30	$0 to $600	$0 to $20,000	$0 to $1
Administrative Detention that Replaces Class I Recall	0 to 184	0	$0 to $600	$0 to $20,000	$0
Administrative Detention that Replaces Referral to State	0 to 23	0 to 30	$0 to $600	$0 to $20,000	$0 to 1
Total					$0 to $2

Loss of product value over detention period, if we later find the product is not violative

Food may lose some or all of its value during an administrative detention because the food may deteriorate, and because firms would have less time to sell food that has a finite shelf life. Reducing the time available to sell food reduces the value of that food because consumers only desire a given quantity of a particular food in a particular time period. In order to sell additional units of that food during that time period, retailers would need to lower the price of the food to reflect the value consumers place on the additional units. This cost is only relevant if we determine that the food does not present a threat of serious adverse health consequence or death to humans or animals and, therefore, terminate the detention and release the food back into commerce. The loss of product value would not be relevant for detained food found to be violative because such food would have lost its value due to its violative nature, rather than the administrative detention.

We have not estimated costs connected to the marking or labeling food that we administratively detain. As we discussed earlier in this preamble, if we required marking or labeling of food in conjunction with an administrative detention order, and we subsequently cancelled the administrative detention order, then we would remove, or authorize the removal of, the marks or labels. Therefore, we assume there will not be any loss of value from the marking or labeling requirements contained in this proposed rule.

Administrative detention actions might also cause food that we do not administratively detain to lose value if delivery of that food to its final destination were delayed as a result of being packed together with food that we did detain. We have not included the potential loss of value from this source because, based on our experience with other enforcement actions, we expect that we will not cause significant delays in the delivery of food that is packed with food that we administratively detain.

Loss of value over the detention period depends on the following factors: (1) Shelf life of the food under usual storage conditions, (2) rate of value loss over time, and (3) starting value of the food.

The loss of value depends on the shelf life of the food because the longer the shelf life, the less the food will deteriorate during a given time period, and the smaller the proportional reduction in the time remaining to sell the food. For purposes of this analysis, we have designated four shelf life categories:

• *Perishable food*. We define perishable food for purposes of this analysis as food having a shelf life of 7 days or less. This is based on the definition of perishable food discussed earlier in this preamble (i.e. perishable food is food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if

held longer than 7 days under normal shipping and storage conditions.) Examples of this type of food include fluid milk that has not been ultra-pasteurized; live fish, lobster, crab, other crustaceans, shellfish; and fresh fruits and vegetables (Ref. 5).

• *Food having a shelf life of between 8 and 30 days.* Food with this shelf life that we regulate include some fresh and processed dairy products, including soft cheeses such as cottage cheese; some bakery items, such as bread, rolls, cakes, pies, and cookies; poultry; and some fruit and vegetable products (Ref. 6). These examples are derived from a list of examples developed by Hurst et al., but do not include products listed as examples in our RPM definition of ''perishable commodity.''

• *Food having a shelf life of between 30 and 90 days.* These types of food include dairy products, such as butter, margarine, natural hard cheese, processed hard cheese, and ice cream; eggs; some picked food; processed salads; some fruit and vegetable products; cured meats; fatty meats such as luncheon meats, ground beef, lamb and pork; fatty fish such as mackerel; shellfish; giblets; some frozen bakery food, such as cake batter, pie shells, fruit pies, yeast breads and rolls, frozen bread and roll dough; fried snack food such as potato chips; frozen convenience food such as pre-cooked combination dinners and frozen french fries; dried bakery products such as cookies and crackers; beverages such as ground coffee that is not vacuum packed; canned pickled fish; powdered cream; and fats and oils such as mayonnaise, salad dressing, and vegetable shortening (Ref. 6).

• *Food having a shelf life of over 90 days.*

The only type of enforcement action for which we have readily available data on the type of food involved is imported food that we have refused entry into the United States. Therefore, we used these data for analysis, because we expect the distribution of food by type for domestic food to be similar. The food categories in these data do not correspond precisely to the shelf life categories just discussed. If a food category covered more than one shelf life category, we assumed that an equal amount of the product in that category belonged to each relevant shelf life category. Based on these assumptions and definitions, approximately 20 percent of the imported food that we refused entry into the United States from August 2001 through July 2002 was perishable under the definition in this proposed rule, 20 percent of the food had a shelf life of 8 to 30 days, 30 percent had a shelf life of 31 to 90 days, and 30 percent had a shelf life of 91 days and over.

The rate of value loss over time varies with the type of food involved. To simplify our analysis, we assumed that all perishable food (i.e., food with a shelf life of up to 7 days) would lose a fixed amount of its starting value each day, such that its value would drop to zero by the end of day seven. This corresponds to a value loss of about 14 percent of the starting value per day. The comparable rates for products with a shelf life of between 8 and 30 days, and between 31 and 90 days, were 3 percent and 1 percent, respectively. We tentatively assume that products with a shelf life of 91 days or more will not lose value during an administrative detention.

In order to apply these rates of value loss, we need the starting value of the food that we would administratively detain. We previously assumed that we would administratively detain 0 to 1 million pounds of food per administrative detention action. The value of this quantity of food would vary considerably with the type of food involved. To estimate an average value, we used the average value of a line of imported food because those data were readily available. After estimating the average value of a line of imported food, we then divide that value by the previously estimated average size of a line of imported food, which was 15,000 pounds, to get an average value per pound. We then multiply that value by 0 to 1 million pounds to arrive at the average value of the amount of food that we might administratively detain. According to U.S. Commerce Department data, the value of imports of food, feeds, and beverages into the United States in 2001 was approximately $47 billion (Ref. 7). To relate the total value to the value of an average line for those types of food, we extrapolated data on the number of lines in the OASIS system for the three quarters of FY 2002 for human and animal food to estimate a total of approximately 4 million lines for human and animal food by the end of FY 2002. This implies an average value per line of about $11,000. We did not have information on the value of other types of imported food, such as dietary supplements or live animals. Therefore, we assumed that the average value per line for all types of food is approximately $11,000. If an average line is 15,000 pounds, then this corresponds to a value per pound of $0.73. Therefore, the value of 0 to 1 million pounds would be $0 to $730,000. Based on the rates of value loss given earlier, the average loss of value per administrative detention action would be $0 to $102,000 (14 percent loss per day x $730,000) per day for perishable food, and $0 to $22,000 (3 percent loss per day x $730,000) per day for nonperishable food.

We have set the maximum timeframe for all administratively detained food, including perishable food, at 30 days. Therefore, we calculated the loss of value for all food based on 0 to 30 days of additional storage. As we discussed earlier in the preamble, we intend in the case of perishable food to send a seizure recommendation to the DOJ within 4 calendar days after we issue an administrative detention order, unless extenuating circumstances exist. However, we do not know how often extenuating circumstances will exist, or how much time will elapse between our recommendation and the subsequent seizure.

We do not estimate any change in the loss of value if we substitute an administrative detention action for a class I recall request, because we previously assumed that substituting an administrative detention action for a class I recall would not change the amount of time a firm would store the food in question. Therefore, any loss of value resulting from taking action against food that was actually not violative would be the same under either type of action. In contrast, there is no storage associated with moving directly to a seizure action or referring a matter to State authorities. Therefore, any loss of value from storage associated with an administrative detention action would be an additional cost in those cases.

We provide estimates of the value loss for food in table 4 of this document. We estimate the maximum loss of value as the maximum number of actions in which the product is not violative, multiplied by the maximum loss per action: $730,000, the average total value of a shipment.

TABLE 4.—ANNUAL LOSS OF VALUE

Action	Number of Actions in which Product Not Violative	Change in Days Storage per Action	Change in Total Loss of Value (in millions)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 8	0 to 30	$0 to $6
Administrative Detention that Replaces Class I Recall	0 to 88	0	$0
Administrative Detention that Replaces Referral to State	0 to 23	0 to 30	$0 to 9
Total			$0 to $15

Costs of marking or labeling

We might label or mark food that we have administratively detained. If we were to label or mark food that we have administratively detained, we could do so in several ways, including, but not limited to, affixing a tag having a self-locking pin that would be inserted in an appropriate seam, border, flap, or other area of the container or product; taping or tying a tag firmly onto the container or item; or affixing the tag to the accompanying documents, or to the carrier. However, if we subsequently cancelled the administrative detention order, then either we, or the firm, would need to remove the label or mark. Class I recalls do not involve marking or labeling. Moving directly to a seizure action or referring a matter to State authorities also does not involve marking or labeling prior to the seizure action.

In an analysis of another proposed rule that we published in 2001, we discussed the costs of marking cartons of imported food with printed labels that we could affix with label guns (Ref. 8). In that analysis, we assumed that an average shipment of imported food would contain about 300 cartons of containers, and that a worker could attach 100 labels per hour. We estimated that the cost of the labor time necessary to attach the labels would be $53 (three hours at $17.64 per hour), and that the cost of labels would be $13 (300 labels at $0.045 per label). A shipment of imported food can involve any number of lines of imported food. Therefore, we assume that one line could contain between 1 and 300 cartons. We earlier assumed that the average amount of food in a line is 15,000 pounds, so we estimate that a shipment contains 0.02 cartons per pound (300 cartons per shipment/15,000 pounds per shipment). Therefore, an administrative detention action involving between 0 and 1 million pounds would require 0 to 200 hours of labor time (0.02 cartons per pound x 1 million pounds/100 labels per hour), and 0 to 20,000 labels (100 labels per hour x 200 hours). The cost of the labor time necessary to attach the labels to the cartons would be $0 to $3,500 ($17.64 per hour x 200 hours), and the cost of the labels would be $0 to $900 ($0.045 per label x 20,000 labels).

We assume that the costs associated with the type of labeling we would require for administrative detention would be similar to the costs associated with the type of labeling we discussed in the 2001 analysis. We also assume it would take the same amount of labor time to remove the labels, if we canceled the administrative detention order, as it would take us to affix the labels. We request comments on these assumptions. Under the proposed rule, we would attach the labels, and firms, under our supervision, would remove the labels, if we terminated the detention order, or when the detention order expired.

After rounding to the nearest million, we estimate the cost for additional marking or labeling would be $0 to $1 million.

TABLE 5.—MARKING OR LABELING

Action	Number of Actions	Label Cost per Action	Change in Total Loss of Value (Rounded to Nearest Million $)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	$4,400 to $7,933	$0
Administrative Detention that Replaces Class I Recall	0 to 184	$4,400 to $7,933	$0 to $1
Administrative Detention that Replaces Referral to State	0 to 23	$4,400 to $7,933	$0
Total			$0 to $1

Costs of Appeals

The appeals process associated with administrative detention actions is another potential source of costs. In order to calculate the costs of administrative detention actions relative to the other baseline enforcement actions, we must first consider the cost of appeals associated with the other actions. There is no formal appeals process associated with class I recalls because these are voluntary. When FDA requests firms to take class I recalls, there is often an informal dialog between those firms and FDA. However, this type of dialog may take place with respect to any enforcement activity, including administrative detentions and seizures. Therefore, we have not included the costs of this informal dialog as part of the baseline costs. Based on these assumptions, our estimate of the appeals costs for administrative detentions that replace class I recalls is simply the total costs associated with appeals of administrative detentions.

There is also no appeals process prior to a seizure action in cases in which we move directly to a seizure action. However, firms can contest seizure actions, once they occur. In addition, firms can appeal federal district court resolutions of contested seizure actions. Most recently, firms have contested approximately 65 percent of our seizure actions involving foods. However, firms rarely appeal federal district court resolutions of contested seizure actions. Previously, we noted that we would not include the costs associated with seizure actions in baseline costs. This is because we might follow an administrative detention with a seizure action, so any costs associated with seizure actions might take place irrespective of whether those seizure actions were preceded by administrative detentions. Instead, we viewed administrative detentions as preliminary enforcement actions that had no counterpart in cases in which we moved directly to a seizure action. However, in this instance, we have included our costs associated with contested seizure actions as part of baseline costs. We have included these costs because firms that appeal an administrative detention, and lose that appeal, are probably less likely to contest a subsequent seizure action, than firms that are involved in a seizure action that was not preceded by an administrative detention. Therefore, the appeals process for administrative detentions may, as a practical matter, replace the process of contesting seizure actions in many cases in which we administratively detain food and then seize it. On the other hand, we have not included the costs associated with appealing federal district court resolutions of contested seizure actions as part of baseline costs. These types of appeals are quite rare, and estimating the costs associated with these types of appeals would have little impact on our cost estimates.

Finally, there is no appeals process associated with referring a matter to State authorities. Of course, if State authorities subsequently take enforcement action, then various appeals processes may be available under State laws or regulations for those actions. However, those methods of appeal would be available irrespective of whether the State actions were preceded by administrative detentions. In addition, the variety of State actions and appeals processes suggests that the probability that a firm will appeal a State action is probably not highly related to whether it has already filed and lost an appeal of an administrative detention. Therefore, we assume that administrative detention will not affect the probability that firms will appeal subsequent State actions.

We estimate that our costs for activity related to appeals of administrative detentions would be approximately $50,000 to $70,000 per administrative detention. We based that estimate on our costs for preparing for possible appeals, which would be generated by all administrative detention actions, and our costs for participating in appeals hearings, which would be generated only by those administrative detentions that result in hearings. In order to calculate an average cost per administrative detention action, we assumed that 65 percent of our administrative detentions would result in an appeals hearing. We based that assumption on the proportion of seizure actions that firms contest. Therefore, the incremental change in appeals costs associated with substituting an administrative detention action for a class I recall is approximately $50,000 to $70,000.

Our costs for activity related to firms contesting our seizures are approximately $10,000 to $20,000 per seizure action. We based that estimate on our costs for participating in a contested seizure case, and a 65 percent chance that firms would contest any given seizure action. Therefore, the incremental change in appeals costs associated with substituting an administrative detention action for a case of moving directly to a seizure action is approximately $30,000 to $60,000. We present the resulting cost estimates for the agency in table 6 of this document.

TABLE 6.—APPEALS

Action	Number of Actions	Label Cost per Action	Change in Total Loss of Value (Rounded to Nearest Million $)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	$30,000 to $60,000	$0 to $1
Administrative Detention that Replaces Class I Recall	0 to 184	$50,000 to $70,000	$0 to $13
Administrative Detention that Replaces Referral to State	0 to 23	$50,000 to $70,000	$0 to $2
Total			$0 to $16

A firm's decision to appeal an administrative detention order is voluntary. A firm would only appeal an administrative detention order if the costs of doing so were less than the costs of not doing so. Therefore, a firm's participation in the appeals process would usually reduce the costs that we previously estimated for storage and value loss by more than the cost of participating in the appeals process. Because we have already estimated storage costs and product value loss as a range that goes to zero, we have not attempted to analyze the cost and benefit implications of firms' decisions to appeal administrative detention actions.

The specific characteristics of the proposed appeals process for administrative detentions would affect the cost of the appeals process for us and for affected firms. Examples of specific characteristics include the time frame under which we would allow firms to file an appeal for perishable and nonperishable food, the information we would require in an appeal, the timeframes in which we would respond to an appeal, and the availability of an appeals hearing, as opposed to some other type of appeals process. We request comments on the impacts of the specific requirements of the proposed appeals procedure.

Other Enforcement Costs

Differences in other enforcement costs associated with administrative detention actions, class I recalls, moving

directly to seizure actions, and referring matters to State authorities, are also relevant to this analysis. Both administrative detentions and class I recalls require us to undertake certain types of activity to implement, and we assume that the costs of this activity would be similar for these actions. Although taking no action prior to a seizure action or referring a matter to State authorities requires no activity, the activity that we undertake to move directly to seize food or to provide information on a matter to State authorities probably overlaps to some degree with the activity that we would undertake to implement an administrative detention action. The cost of the additional activity required to seize food following another enforcement action is significantly less than the cost of the activity required to move directly to seize food, because some of the activity of the preliminary action is also relevant to seizing the food. Therefore, we assume that the cost of the activity that we undertake to directly move to seize food is similar to the cost of the activity we undertake to implement an administrative detention action followed by a seizure action. Similarly, we assume that the cost of the activity that we and States undertake when we refer a matter to State authorities is similar to the cost of the activity that we and States undertake to implement an administrative detention action followed by State action.

Cost summary

We present a summary of the costs in table 7 of this document.

TABLE 7.— ANNUAL COSTS FOR OPTION 1: TRANSPORTATION AND PERISHABLE FOODS (PROPOSED RULE)

Type of Cost	Cost (in millions)
Transportation	$0 to $4
Storage	$0 to $2
Loss of Product Value	$0 to $15
Marking or Labeling	$0 to $1
Appeals	$0 to $16
Total	$0 to $38

Benefits

Administrative detention authority improves our ability to respond to outbreaks from accidental and deliberate contamination from food, and deter deliberate contamination. Based on historical evidence, a strike on the food supply has a very low probability, but would be a potentially high cost event. FDA lacks data to estimate the likelihood and resulting costs of a strike occurring. Without knowing the likelihood or cost of an event, we cannot quantitatively measure the reduction in probability of an event occurring or the possible reduction in cost of an event, associated with each regulatory option. Further hindering any quantification of benefits is the interactive effect of the other regulations that are being developed to implement title III of the Bioterrorism Act.

Administrative detention differs from existing enforcement alternatives along the following dimensions: (1) Speed of action, (2) need for collaboration with other agencies, (3) maximum level of security, and (4) timeframes. Actions that we can implement faster will reduce risk more than actions that take longer to implement, because we have a higher probability of removing the product from commerce before it reaches the consumer. We have a higher probability of successfully taking an action that does not require collaboration because actions that require us to collaborate with other agencies involve more than one set of decision criteria and more than one decision maker. Actions that allow us to require higher security transportation and storage reduce risks because such actions reduce the probability that we will lose control of the product, and that adulterated food will reach consumers. Actions with longer time frames reduce risk because we have more time to complete our investigation and a lower probability of releasing food that is violative back into commerce. The relative advantages of the various enforcement actions are provided in table 8 of this document. The expressions ''permanent'' and ''temporary'' in the time frames represent the relative time frames under which we can keep a potentially violative food out of the distribution system.

TABLE 8.—COMPARISON OF ENFORCEMENT ACTIONS

Action	Speed	Collaboration	Highest Potential Security	Timeframes
Administrative Detention	High	No	High	Temporary
Seizure	Low	No	High	Permanent
Class I Recall	Low	Yes	Low	Permanent
Referral to State	Low	Yes	Low	Unknown

We have insufficient information to quantify the health benefits of substituting administrative detention for the other enforcement actions. However, to understand the possible costs of an intentional strike on the food supply, table 9 of this document presents information on five outbreaks resulting from accidental and deliberate contamination, involving both domestic and imported foods. These outbreaks do not represent possible forms that a terrorist attack might undertake, but merely illustrate the public health costs of foodborne disasters. It is likely that an intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens would be much larger. However, the probability of an attack occurring and the exact reduction in risk resulting from administrative detention is unknown.

TABLE 9.—SUMMARY OF FIVE FOODBORNE OUTBREAKS

Pathogen	Location and Year	Vehicle	Confirmed or Reported Cases	Estimated Number of Cases	Total Illness Cost
Salmonella enteritidis	Minnesota, 1994	Ice cream	150 cases; 30 hospitalizations	29,100 in MN; 224,000 Nationwide	$3,187,744,000 to $5,629,792,000
Shigella sonnei	Michigan, 1988	Tofu salad	3,175 cases	Not available	$45,183,000 to $79,795,000
Outbreaks resulting from deliberate contamination					
Salmonella Typhimurium	Dalles, Oregon, 1984	Salad bars	751 cases; 45 hospitalizations	Not available	$10,687,000 to $18,875,000
Shigella dysentreriae type 2	Texas, 1996	Muffins and doughnuts	12 cases; 4 hospitalizations	All cases identified	$83,000
Outbreaks resulting from imported foods					
Cyclospora cayaetanensis	United States and Canada, 1996	Raspberries (probably imported from Guatemala)	1465 cases identified, less than 20 hospitalization	Not available	$3,941,000

Salmonella enteritidis in ice cream

In 1994, approximately 224,000 people were sickened by ice cream contaminated with *Salmonella enteritidis*. The source of the contamination appeared to be pasteurized premix that had been contaminated during transport in tanker trailers that carried nonpasteurized eggs. There were 150 confirmed cases of salmonellosis associated with the outbreak in Minnesota. However, ice cream processed during the contamination period was distributed to 48 states. To calculate the total number of illnesses associated with the outbreak, researchers calculated an attack rate of 6.6 percent. This attack rate was extrapolated to the population that consumed the ice cream, giving a total number sickened of 224,000 (Ref. 9).

Salmonellosis most commonly causes gastrointestinal symptoms. Almost 91 percent of cases are mild and cause 1 to 3 days of illness with symptoms including diarrhea, abdominal cramps, and fever. Moderate cases, defined as cases that require a trip to a physician, account for 8 percent of the cases. These cases typically have a duration of 2 to 12 days. Severe cases require hospitalization and last 11 to 21 days. In addition to causing gastroenteritis, salmonellosis also can cause reactive arthritis in a small percentage of cases. Reactive arthritis may be short or long term and is characterized by joint pain. Just over 1 percent of cases develop short-term reactive arthritis and 2 percent of cases develop chronic, reactive arthritis.

FDA estimated the costs associated with salmonellosis, including medical treatment costs and pain and suffering. Table 10 of this document provides a summary of these estimates. Pain and suffering is measured by lost quality adjusted life days (QALDs). QALDs measure the loss of utility associated with an illness. A QALD is measured between zero and one, with one being a day in perfect health. FDA presents two estimates of values of pain and suffering associated with arthritis, one based on physician estimates (Ref. 10) and another based on a regression analysis approach (Ref. 11). This gives a range of costs for the average case of salmonellosis between $14,231 and $25,133.

TABLE 10.—THE VALUE OF A TYPICAL CASE OF SALMONELLOSIS

Severity	Case Breakdown	Total QALDs Lost per Illness	Health Loss per Case (Discounted)	Medical Costs per Case (Discounted)	Weighted Dollar Loss per Case
Illness					
Mild	90.7%	1.05	$660	$0	$599
Moderate	8.1%	3.68	$2,310	$283	$209
Severe	1.2%	9.99	$6,266	$9,250	$188
Arthritis					
Regression Approach					
Short-Term	1.26%	5.41	$3,391	$100	$44
Long-Term	2.40%	2,613.12	$452,554	$7,322	$11,048
Direct Survey Approach					
Short-Term	1.26%	10.81	$6,778	$100 $87	
Long-Term	2.40%	5,223.15	$904,573	$7,322	$21,906
Death	0.04%		$5,000,000		$2,143

TABLE 10.—THE VALUE OF A TYPICAL CASE OF SALMONELLOSIS—Continued

Severity	Case Breakdown	Total QALDs Lost per Illness	Health Loss per Case (Discounted)	Medical Costs per Case (Discounted)	Weighted Dollar Loss per Case
Total Expected Loss per Case				Regression Approach Direct Survey Approach	$14,231 $25,133

To estimate the economic cost due to illness associated with this outbreak, FDA used the range for the average cost per case. For 224,000 people, this is a total cost of between $3,187,744,000 and $5,629,792,000 from this accidental food disaster.

Shigella sonnei in tofu salad

In 1988, a tofu salad at an outdoor music festival was contaminated with *Shigella sonnei* and sickened an estimated 3,175 people. Over 2,000 volunteer food handlers served communal meals at the festival (Ref. 12). Shigellosis causes similar symptoms and is of similar duration to salmonellosis. It also is associated with short-term and chronic reactive arthritis; thus FDA assumed the average case of shigellosis has the same cost as salmonellosis. This gives a total cost of $45,183,000 to $79,797,000.

Salmonella typhimirium in salad bars

During September and October of 1984, two outbreaks of *S. typhimirium* occurred in association with salad bars in restaurants in The Dalles, Oregon. At least 751 people were affected. Members of the local Rajneeshpuram commune intentionally caused the outbreak by spraying *S. typhimirium* on the salad bars in local restaurants. Their apparent motivation was to influence a local election by decreasing voter turnout. Intentional contamination was not suspected immediately and no charges were brought until a year after the attacks (Ref. 13).

The 751 people affected primarily were identified through passive surveillance; thus the true number of people actually sickened is undoubtedly much higher. The Dalles is located on Interstate 84 in Oregon and is a frequent stop for travelers who were unlikely to be identified by passive or active surveillance for salmonellosis. However, since we do not have any estimates of the true size of the outbreak, we estimated the costs associated with known cases, recognizing this is an underestimate of the true cost of the outbreak. We use the cost estimates for salmonellosis as ranging from $14,231 to $25,133. This gives an estimated cost of known cases for the outbreak of $10,687,000 to $18,875,000.

Shigella dysenteriae type 2 among laboratory workers

Twelve people working in a laboratory who consumed muffins left in the laboratory break room contracted shigellosis. Affected workers had diarrhea, nausea, and abdominal discomfort. Investigators concluded that the outbreak likely was the result of deliberate contamination. All 12 affected workers were treated by, or consulted with, a physician. Nine affected workers went to the emergency room, four of whom were hospitalized (Ref. 14).

To estimate the cost of this outbreak, FDA assumed that the eight cases requiring consultation with a doctor, but not requiring hospitalization, had the same cost as a moderate case of salmonellosis. The four cases requiring hospitalization were estimated to have the same cost as a severe case of gastroenteritis resulting from salmonellosis. This gives a cost of $83,000 for illnesses associated with the event.

TABLE 11.—SUMMARY OF COSTS FOR AN OUTBREAK OF SHIGELLOSIS

Severity	Number of Cases	Cost per Case	Total Cost
Mild	0	$0	$0
Moderate	8	$2,593	$21,000
Severe	4	$15,516	$62,000
Total	12		$83,000

Cyclospora cayatanensis in imported raspberries

In 1996, 1,465 cases of cyclosporiasis were linked to consumption of raspberries imported from Guatemala. Nine hundred and seventy eight of these cases were laboratory confirmed. No deaths were confirmed and less than 20 hospitalizations were reported (Ref. 15). Case control studies indicated that raspberries imported from Guatemala were the source of the illnesses. Fifty-five clusters of cases were reported in 20 States, two Canadian provinces, and the District of Columbia (Ref. 16).

Cyclosporiasis typically causes watery diarrhea, loss of appetite, weight loss, and fatigue. Less common symptoms include fever, chills, nausea, and headache. The median duration of illness associated with the outbreak was more than 14 days and the median duration of diarrheal illness was 10 days (Ref. 16). We estimated the cost of a mild case of cyclosporiasis as two and a half times higher than the cost of a mild case of gastroenteritis from salmonellosis due to the longer duration. The reports of cyclosporiasis outbreaks did not include information on the number of physician visits. We assumed that the percentage of total cases that result in physician visits would be larger than the corresponding percentage for salmonellosis illnesses, due to the longer duration of illnesses. We assumed, therefore, that 40 percent of those infected with cyclosporiasis visited a physician. Less than 20 hospitalizations were reported from the cyclosporiasis outbreak (Ref. 15). No deaths were confirmed.

TABLE 12.—SUMMARY OF COSTS OF AN OUTBREAK OF CYCLOSPORIASIS

Severity	Number of Cases	Cost per Case	Total Cost
Mild	879	$1,650	$1,450,000
Moderate	586	$3,748	$2,196,000
Severe	19	$15,516	$295,000
Total	1,465		$3,941,000

Option Two: Take the proposed action, but change either or both the definition of perishable food and the maximum time frame for administrative detention of perishable food.

Costs

If we established a shorter maximum timeframe for administrative detention of perishable food, then we would reduce the potential storage costs and loss of value associated with administratively detaining that food. If we also broadened the definition of perishable food to include products with a shelf life of over 7 days, then we would further decrease the storage costs and loss of food product value for those additional types of food. One reasonable alternative would be to broaden the definition of perishable food to include any food that might lose all of its value during a 30-day administrative detention period, that is, any food with a shelf life of 30 days or less, and reduce the maximum timeframe for administratively detaining a perishable food to 14 days. We calculated the costs of this option using the same procedures that we used for Option one (take the proposed action). We present these costs in table 13.

TABLE 13.—ANNUAL COSTS FOR OPTION 2: ALTERNATIVE DEFINITION AND MAXIMUM DETENTION PERIOD FOR PERISHABLE FOOD

Type of Cost	Cost (rounded to nearest million $)
Transportation Cost	$0 to $4
Storage Cost	$0 to $1
Loss of Product Value	$0 to $8
Marking or Labeling	$0 to $1
Appeals	$0 to $16
Total	$0 to $30

If we attempted to maintain the same level of investigation under the shorter maximum timeframes for perishable food by using our enforcement resources more intensively, then enforcement costs might also increase. In that case, we would need to compare the cost of using our investigative resources more intensively for a shorter period of time relative to using those resources less intensively for a longer period of time. More intensive use of resources would probably cost more because it would probably require our employees to work overtime and possibly over weekends and holidays. Therefore, this would reduce any cost savings introduced by the shorter maximum timeframes for perishables.

Benefits

Changing the definition of perishable food and the maximum timeframes for administrative detentions of perishable food could also affect the health benefits of this rule. Broadening the definition of perishable food and establishing a shorter maximum timeframe for administratively detaining that food would reduce the maximum timeframes for storage of those products that qualified as perishable food relative to the time frame for nonperishable food. The significance of this change depends on how often we need the full 30 days to complete our investigations. If we usually complete our investigations in the time allowed under the hypothetical shorter maximum detention time we could establish for perishable food, then including more products in the perishable category would have little effect on the risk that we would fail to catch a violative product because of the shorter investigation period. However, if we often need the full 30 days to complete our investigations, then including more products in the perishable category and establishing a shorter maximum detention time for administrative detention of perishable food would increase the risk that we would fail to catch a violative product during the investigation period. We do not have sufficiently detailed information to estimate these changes in health benefits.

We might also be able to maintain the same effect on risk and health benefits under the shorter timeframes by using resources more intensively during the shorter investigation period. For example, if we were to allocate more employees to work on an investigation, or if our employees were to work extra hours, then we might be able to complete the same level of investigation under a shorter timeframe. In that case, this option would have the same health benefits as Option one, but additional costs might be generated by the more intensive use of resources.

Option Three: Take the proposed action, but change the level of security we require for transportation and storage.

Costs

Instead of judging the need for various levels of security on a case-by-case basis, we could require firms to use specified levels of security to transport and store food under specified conditions. In Option one, we assumed, based on information from a trade group, that the costs for using bonded carriers and warehouses were similar to those for using nonbonded carriers and warehouses. However, if we chose a lower security approach and allowed firms to store administratively detained food in place, then we would eliminate the transportation costs. Eliminating transportation costs would reduce total costs to a range of $0 to $34 million.

If we required firms to undertake security operations they would not otherwise have taken, then we would need to add in the cost of that activity. One example of the type of activity we might require is posting additional security guards. The average hourly wage of a security guard in 2000 was about $9.50 (Ref. 17). We doubled this wage to account for overhead, such as health benefits, to get an annual hourly wage of about $17. Therefore, the average cost of posting one additional security guard would be approximately $450 per day. The number of guards would depend on the number of facilities involved. Firms might already have distributed food that we administratively detain. Based on our experience with other enforcement actions, we believe that between 1 and 20 storage facilities might be involved per administrative detention action. Therefore, we calculate the cost of adding 1 guard by multiplying the cost of 1 additional security guard per day,

times a maximum of 30 days storage, times the number of administrative detentions, times the number of facilities involved per administrative detention. Using this approach, we estimate the total costs associated with no transportation and posting one additional guard would be $0 to $45 million.

TABLE 14.—ANNUAL COSTS FOR OPTION 3: NO TRANSPORTATION AND ONE ADDITIONAL GUARD

Type of Cost	Cost (rounded to nearest million $)
One additional guard	$0 to $11
Storage Cost	$0 to $2
Loss of Product Value	$0 to $15
Marking or Labeling	$0 to $1
Appeals	$0 to $16
Total	$0 to $45

We do not have information on the costs of using high security transportation and storage. However, requiring high security transportation and storage would probably substantially increase transportation and storage costs.

Benefits

As discussed in Option one, bonded and third party carriers and warehouses provide some degree of additional security relative to relying on a firm's own transportation system and storage facilities. However, they do not provide the highest level of security because food can be stolen from such facilities, and because the owners of those facilities could, themselves, become involved in deliberately adulterating food. Therefore, requiring a higher level of security for transportation and storage would reduce the probability that an adulterated product might find its way back into commerce during a detention. We have insufficient information to estimate the change in health benefits from more secure transportation and storage.

Option Four: Issue regulations only to establish expedited procedures for instituting certain enforcement actions involving perishable food (i.e., limit the action to that required by section 303 of the Bioterrorism Act).

The Bioterrorism Act requires us to issue regulations establishing expedited procedures for instituting seizure actions, injunction actions, or both against perishable food. Therefore, taking no regulatory action with regard to those procedures would not be a legally viable option. However, we could promulgate a more limited rule that covered only expedited procedures for enforcement actions involving perishable food, rather than a rule that also included general procedures for administrative detention.

Costs

If we were to issue a more limited rule, we would still be able to administratively detain food because Congress has already granted us that authority under the Bioterrorism Act. We would probably administratively detain food in the same situations in which we would have taken this action under the proposed rule. Therefore, the costs we estimated under Option One would also apply to this option. In addition, there could be some additional enforcement cost associated with relying on the language of the act rather than our own regulations when taking this action. These additional costs would be caused by our need to develop and defend our interpretation of the language of the Bioterrorism Act piecemeal in court, rather than through implementing regulations. These court proceedings would probably take longer and be more complicated than they would be if we were enforcing more specific regulatory language. We have insufficient information to estimate this change in costs. Therefore, we can only determine that the lower bound of the range of potential costs for this option would be somewhat greater than $0 million, and the upper bound would be somewhat higher than $38 million, and the costs associated with this option would be somewhat greater than those associated with Option one under any given scenario.

Benefits

Again, even if we did not include the overall framework for administrative detention in this rule, we would probably use administrative detention in the same situations in which we would use administrative detention under the framework developed in this proposed rule. However, we expect we would have somewhat more difficulty using administrative detention if we relied only on the language of the act rather than also on our more detailed regulations. For example, if we needed to develop and defend our interpretation of the language of the Bioterrorism Act piecemeal in court, our ability to pursue administrative detentions while such proceedings are ongoing might be limited or even precluded. Therefore, the benefits of this option might be somewhat lower than those for Option one.

Summary of Options

We summarize the costs and benefits of the various options in table 15.

TABLE 15.—SUMMARY OF ANNUAL COSTS AND BENEFITS

Option	Costs (in millions)	Benefits (in millions)
1—transportation and perishable foods as proposed	$0 to $38	> $0
2—perishable foods alternatives	$0 to $30	> $0, but < Option 1
3—no transportation, but one additional guard	$0 to $45	> $0
4—limited to Act	> $0 to > $38	> $0, but < = Option 1

The ranges generated by the underlying uncertainties in our analysis, particularly concerning benefits, preclude us from drawing any firm conclusions about the relative net benefits of the various regulatory options. The potential costs for Option One (the proposed rule) are lower than those for Option Three, and we are unable to differentiate the potential benefits of these two options. The similarity between the estimated ranges of costs and benefits for these two options suggests that we should determine whether to require transportation or storage in place on a case-by-case basis, as we have proposed. The potential costs for Option One are higher than those for Option Two. However, the estimated benefits of Option One are also higher than those of Option Two. We have insufficient information to quantify the difference in benefits. The potential costs for Option One are lower than those for Option Four, and the benefits of Option One are greater or equal to those of Option Four. Therefore, Option One would lead to higher net benefits than Option Four.

B. Initial Regulatory Flexibility Analysis

We have examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. We find that this proposed rule would not have a significant economic impact on a substantial number of small entities. Nonetheless, we have provided an initial regulatory flexibility analysis under the Regulatory Flexibility Act, which consists of the analysis below with other relevant sections of this document.

This proposed rule may affect firms involved in the production or handling of human food and animal feed such as the following: (1) Food producers such as farms, ranches, fisheries, dairies, bakeries, breweries, distilleries, and manufacturers of processed food, food additives, dietary supplements, infant formula, and food contact substances; (2) food importers; (3) food wholesalers or brokers; (4) food retailers; (5) food service establishments; and (6) food transporters. The rule might affect producers because we could administratively detain food at one of the producer's facilities prior to distribution of that food to wholesalers or brokers. We could also administratively detain food anywhere in the distribution system, from wholesaler and retailer warehouses, to retail store shelves, to food service establishment kitchens or storerooms. The rule might affect transporters because we might detain food that is en route to another location, and the food might be packed together with food that we would not detain. This might cause delays in the deliveries of the other food.

Potentially affected firms fall into a number of different North American Industry Classification System (NAICS) codes, including the following: 111 Crop Production, 112 Animal Production, 1141 Fisheries, 311 Food Manufacturing, 3121 Beverage Manufacturing, 325412 Pharmaceutical Preparation Manufacturing, 4224 Grocery and Related Products Wholesalers, 4225 Farm Product Raw Material Merchant Wholesalers, 4248 Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers, 445 Food and Beverage Stores, 446191 Food (Health) Supplement Stores, 481112 Scheduled Freight Air Transportation, 481212 Nonscheduled Chartered Freight Air Transportation, 482 Rail Transportation, 483111 Deep Sea Freight Transportation, 483113 Coastal and Great Lakes Freight Transportation, 483211 Inland Water Freight Transportation, 484 Truck Transportation (except 48421 Used Household and Office Food Moving, 4842201 Local Hazardous Materials Trucking, 4842203 Dump Trucking, and 4842301 Long Distance Hazardous Materials Trucking), and 722 Food Service and Drinking Places. There is also no NAICS code for manufacturers of food contact material. However, the following NAICS codes cover some of the potentially affected firms: 322215 Non-Folding Sanitary Food Container Manufacturing, 32222 Paper Bag and Coated and Treated Paper Manufacturing, 32611 Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing, 327213 Glass Container Manufacturing, and 333993 Packaging Machinery Manufacturing. There are no NAICS codes for manufacturers of food additives or for food importers, and we assume these firms are included in the other categories.

The 1997 Economic Census lists 1.6 million establishments in these categories, excluding NAICS codes 111, 112, 1141, and 482, which are not included in the Economic Census. The 2000 County Business Patterns updates some of the numbers from the 1997 Economic Census. However, the County Business Patterns data includes only establishments with employees. In order to obtain another estimate of the number of firms using the updated data, we combined the number of establishments with employees from the 2000 County Business Patterns with an estimate of the number of establishments without employees based on the proportion of firms with and without employees in the 1997 Economic Census. This procedure also led to an estimate of approximately 1.6 million establishments in these categories, excluding NAICS codes 111, 112, 1141, and 482. An establishment without employees is an establishment that is staffed only by the owners of that establishment.

We also used the Dun and Bradstreet Market Identifiers database to get a count of the number of firms in these categories. This database uses Standard Industry Classification (SIC) codes rather than NAICS codes. SIC codes do not correspond exactly to NAICS codes. We based our estimate on all SIC codes that even partially corresponded to relevant NAICS codes. This database allows one to count firms rather than establishments, and also allows one to identify firms by both primary and secondary activities. According to this database, approximately 1.8 million firms could be affected by this rule. However, we would not be able to affect more firms in 1 year than the estimated number of administrative detentions that we might take in 1 year. In the analysis of impacts above, we estimated that we might administratively detain food between 0 and 200 times per year. Therefore, we estimate that this rule may affect between 0 and approximately 200 firms per year.

The Small Business Administration (SBA) publishes definitions of small businesses by six-digit NAICS code (Ref. 18). Some of the NAICS codes listed previously above are less than six digits. In those cases, we used the range of small business definitions for all six-digit subcategories in the relevant NAICS code. The current SBA definitions in terms of either maximum annual average receipts or number of employees are as follows: 111 ($0.75 million), 112 ($0.75 to $10.5 million), 1141 ($3.5 million), 311 (500 to 1,000), 3121 (500 to 750), 322215 (750), 32222 (500), 325412 (750), 32611 (500), 327213 (750), 333993 (100), 4224 (100), 4225 (100), 42251 (100), 4228 (100), 445 ($6 to $23 million), 446191 ($6 million), 481112 (1,500), 481212 (1,500), 482 (500), 483111 (500), 483113 (500), 483211 (500), 484 except 48421, 4842201, 4842203, and 4842301 ($21.5 million), 722 ($6 million to $17.5 million). We applied the relevant range of sizes to the SIC codes that at least partially corresponded to the relevant NAICS codes and found that approximately 84 to 90 percent of the firms that this rule might affect are small businesses under SBA size definitions. Therefore, we estimate that this rule may affect between 0 and 180 small businesses each year.

The potential cost per administrative detention for small entities based on taking the proposed action and the information and assumptions in the preceding impact analysis would be $20,000 to $330,000, depending on the type of product involved and the type of enforcement action that we would replace with an administrative detention, and whether or not the firm appealed the administrative detention order. However, we based this range on a number of assumptions that are probably more reasonable when applied to average or expected costs across a large number of actions than to a single action. Thus, the actual range of potential costs for a single detention action would be much larger. In addition, the cost per firm would depend on the number of times that we

detain that firm's products in a given time period. The most we can say about costs on a per firm basis is that the average expected cost per firm across all potentially affected firms would presumably be quite low, but the cost for a particular firm in a particular year could be significant, depending on a number of variables including the type and amount of product involved. FDA requests comment on the impact of this proposed rule on small entities.

The fact that most of the potentially affected firms are small businesses suggests that the options that would be relevant to small businesses are the same as the options relevant for all firms discussed in the impact analysis above. Options two and three would both reduce the impact on small firms. However, these options would also reduce benefits, and we do not have sufficient information to estimate the change in net benefits.

Administrative detention involves preventing the movement of food upon credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. This standard is applicable without regard to the size of any business involved. Most of the businesses impacted by this proposed rule are small businesses. To provide an exemption for small businesses under this proposed rule would defeat the purposes of the statute. Accordingly, we are not providing exemptions from the requirements of this regulation to small businesses.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $112.3 million per year. We have estimated that the total cost of the proposed rule would be no more than $38 million per year. Therefore, we have determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

D. SBREFA Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 SBREFA (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: an annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with SBREFA, the Office of Management are Budget (OMB) has determined that this proposed rule, when final, will not be a major rule for the purpose of congressional review.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

We tentatively conclude that these proposed information collection provisions are exempt from OMB review under 44 U.S.C. 318(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities. The regulations in 5 CFR 1320(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit or action, but only after a case file or equivalent is opened with respect to a particular party. We seek comment on our tentative conclusion that these information collections are exempt from OMB review.

VII. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

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

IX. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA cannot be responsible for addressing comments submitted to the wrong docket or that do not contain a docket number. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA notes that the comment period for this document is shorter than the 75-day period that the agency customarily provides for proposed rules that are technical or sanitary or phytosanitary (SPS) measures. FDA believes that a 60-day comment period is appropriate in this instance. Executive Order 12889, ''Implementation of the North American Free Trade Agreement'' (58 FR 69681, December 30, 1993), states that any agency subject to the Administrative Procedure Act must provide a 75-day comment period for any proposed Federal technical regulation or any Federal SPS measure of general application. Executive Order 12889 provides an exception to the 75-day comment period where the United States considers a technical regulation or SPS measure of general application necessary to address an urgent problem related to the protection of human, plant, or animal health. FDA has concluded that this proposed rule is subject to the exception in Executive Order 12889.

The Bioterrorism Act states that it is intended ''[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.'' The provisions in this proposed rule that describe the procedures for how FDA will detain an article of food, how FDA will expedite certain enforcement actions with respect to perishable food, and the process for appealing a detention order will enhance FDA's ability to prevent distribution of food that presents a threat of serious adverse health consequences or death to humans or animals. The legislative history of the Bioterrorism Act, with respect to the regulation required by section 303 of that act, notes that the ''Secretary

should promptly complete such rule making'' (H. Conf. Rept. No. 107–481, at 131 (2002)). This expedited timeframe reflects the urgency of the U.S. Government's need to prepare to respond to bioterrorism and other food-related emergencies.

FDA has concluded that the urgency of this matter is sufficient justification for shortening the public comment period for this proposal to 60 days, consistent with Executive Order 12889.

FDA will not consider any comments submitted after the 60-day comment period closes. Due to the need to promptly complete this rulemaking, FDA does not intend to grant any requests for extensions of the comment period.

X. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

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12. Lee L. A., Ostroff S. M., McGee H. B., Johnson D. R., Downes F. P., Cameron D. N., Bean N. H., and P.M. Griffin, ''An Outbreak of Shigellosis at an Outdoor Music Festival,'' *American Journal of Epidemiology*, 133:6:608–615.
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14. Kolavic S. A., Kimura A., Simons S. L., Slusker L., Barth S., and C. E. Haley, ''An Outbreak of *Shigella Dysenteriae* Type 2 Among Laboratory Workers Due to Intentional Food Contamination,'' *The Journal of the American Medical Association*, 278:5:396–403.
15. Colley D. G., Widespread Foodborne Cyclosporiasis Outbreaks Present Major Challenges (letter), *Emerging Infectious Diseases*, 2:4:354–356.
16. Herwaldt B. L., Ackers M. L., and Cyclospora Working Group, ''An Outbreak in 1996 of Cyclosporiasis Associated With Imported Raspberries,'' *New England Journal of Medicine*, May 29, 1997, pp. 1548–1556.
17. 2000 National Occupational Employment and Wage Estimates, Protective Service Occupations, U.S. Department of Labor, Bureau of Labor Statistics, available on Internet at http://stats.bls.gov/oes/2000/oes_33Pr.htm, accessed October 22, 2002.
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List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, and Reporting and recordkeeping requirements.

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1 and 16 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 304, 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Subpart K is added to part 1 to read as follows:

Sec.

Subpart K—Administrative Detention of Food for Human or Animal Consumption

General Provisions

1.377 What definitions apply to this subpart?
1.378 What criteria does FDA use to order a detention?
1.379 How long may FDA detain an article of food?
1.380 Where and under what conditions must the detained article of food be held?
1.381 May a detained article of food be delivered to another entity or transferred to another location?
1.382 What labeling or marking requirements apply to a detained article of food?
1.383 What expedited procedures apply when FDA initiates a seizure action against a detained perishable food?
1.384 When does a detention order terminate?

How does FDA order a detention?

1.391 Who approves a detention order?
1.392 Who receives a copy of the detention order?
1.393 What information must FDA include in the detention order?

What is the appeal process for a detention order?

1.401 Who is entitled to appeal?
1.402 What are the requirements for submitting an appeal?
1.403 What requirements apply to an informal hearing?
1.404 Who serves as the presiding officer at an informal hearing?
1.405 When does FDA have to issue a decision on an appeal?
1.406 How will FDA handle classified information in an informal hearing?

Subpart K—Administrative Detention of Food for Human or Animal Consumption

General Provisions

§ 1.377 What definitions apply to this subpart?

The definitions of terms that appear in section 201 of the act (21 U.S.C. 321)

apply when the terms are used in this subpart.

In addition, for the purposes of this subpart:

Act means the Federal Food, Drug, and Cosmetic Act.

Authorized FDA representative means an FDA District Director in whose district the article of food involved is located or an FDA official senior to such director.

Calendar day means every day shown on the calendar.

Food has the meaning given in section 201(f) of the act (21 U.S.C. 321(f)). Examples of food include, but are not limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed, including pet food, food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food, dietary supplements and dietary ingredients, infant formula, beverages, including alcoholic beverages and bottled water, live food animals, bakery goods, snack foods, candy, and canned foods.

Perishable food means food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.

We means the U.S. Food and Drug Administration (FDA).

Working day means any day from Monday through Friday, excluding Federal holidays.

You means any person who received the detention order or that person's representative.

§ 1.378 What criteria does FDA use to order a detention?

An officer or qualified employee of FDA may order the detention of any article of food that is found during an inspection, examination, or investigation under the act if the officer or qualified employee has credible evidence or information indicating that the article of food presents a threat of serious adverse health consequences or death to humans or animals.

§ 1.379 How long may FDA detain an article of food?

(a) FDA may detain an article of food for a reasonable period that may not exceed 20 calendar days after the detention order is issued. However, an article may be detained for 10 additional calendar days if a greater period of time is required to institute a seizure or injunction action. The authorized FDA representative may approve the additional 10 calendar day detention period at the time the detention order is issued or at any time within the 20 calendar day period by amending the detention order.

(b) The entire detention period may not exceed 30 calendar days.

(c) An authorized FDA representative may, in accordance with § 1.384, terminate a detention order before the expiration of the detention period.

§ 1.380 Where and under what conditions must the detained article of food be held?

(a) You must hold the detained article of food in the location and under the conditions specified by FDA in the detention order.

(b) If FDA determines that removal to a secure facility is appropriate, the article of food must be removed to a secure facility. A detained article of food remains under detention before, during, and after movement to a secure facility. FDA will also state in the detention order any conditions of transportation applicable to the detained article.

(c) If FDA directs you to move the detained article of food to a secure facility, you must receive a limited conditional release under § 1.381(c) before you move the detained article of food to a secure facility.

(d) You must ensure that any required tags or labels under § 1.382 accompany the detained article during and after movement. The tags or labels must remain with the article of food until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the authorized FDA representative.

(e) The movement of an article of food in violation of a detention order issued under § 1.393 is a prohibited act under section 301 of the act.

§ 1.381 May a detained article of food be delivered to another entity or transferred to another location?

(a) An article of food subject to a detention order under this subpart may not be delivered to another entity under the execution of a bond. Notwithstanding section 801(b) of the act (21 U.S.C. 381(b)), while any article of food is subject to a detention order under section 304(h) of the act, it may not be delivered to any of its importers, owners, or consignees.

(b) Except as provided in paragraph (c) of this section, no person may transfer a detained article of food within or from the place where it has been ordered detained, or from the place to which it was removed, until an authorized FDA representative releases the article of food under § 1.384 or the detention period expires under § 1.379, whichever occurs first.

(c) The authorized FDA representative may approve, in writing, a request for a limited conditional release of a detained article of food for any of the following purposes:

(1) To destroy the article of food,

(2) To move the detained article of food to a secure facility under the terms of a detention order,

(3) To maintain or preserve the integrity or quality of the article of food, or

(4) For any other purpose that the authorized FDA representative believes is appropriate in the case.

(d) You must submit your request for the limited conditional release of the detained article in writing to the authorized FDA representative who approved the detention order. You must state in your request the reasons for movement; the exact address of and location in the new facility (or the new location within the same facility) where the detained article of food will be transferred; an explanation of how the new address and location will be secure, if FDA has directed that the article be detained in a secure facility; and how the article will be held under any applicable conditions described in the detention order. If you are requesting a limited conditional release for the purpose of destroying the detained article of food, you also must submit a verified statement identifying the ownership or proprietary interest you have in the detained article of food, in accordance with Supplemental Rule C to the ''Federal Rules of Civil Procedure.''

(e) If FDA approves a request for limited conditional release, the article may be transferred but remains under detention before, during, and after the transfer. FDA will state any conditions of transportation applicable to the detained article. You may not transfer a detained article of food without FDA supervision unless FDA has declined in writing to supervise the transfer. If FDA has declined in writing to supervise the transfer of a detained article, you must immediately notify in writing the authorized FDA representative who approved the limited conditional release of the article of food that the article of food has reached its new location, and the specific location of the detained article within the new location. Such written notification may be in the form of a fax or e-mail or other form as agreed to by the authorized FDA representative.

(f) You must ensure that any required tags or labels under § 1.382 accompany the detained article during and after

movement. The tags or labels must remain with the article of food until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the authorized FDA representative who approves the limited conditional release of the detained article of food under this section.

(g) The transfer of an article of food in violation of a detention order issued under § 1.393 is a prohibited act under section 301 of the act.

§ 1.382 What labeling or marking requirements apply to a detained article of food?

The officer or qualified employee of FDA issuing a detention order under § 1.393 may label or mark the detained article of food with official FDA tags or labels that include the following information:

(a) A statement that the article of food is detained by FDA in accordance with section 304(h) of the act (21 U.S.C. 334(h));

(b) A statement that the article of food must not be consumed, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative;

(c) A statement that the violation of a detention order or the removal or alteration of the tag or label is a prohibited act, punishable by fine or imprisonment or both; and

(d) The detention order number, the date and hour of the detention order, the detention period, and the name of the officer or qualified employee of FDA who issued the detention order.

§ 1.383 What expedited procedures apply when FDA initiates a seizure action against a detained perishable food?

If FDA initiates a seizure action under section 304(a) of the act against a perishable food subject to a detention order under this subpart, FDA will send the seizure recommendation to the Department of Justice within 4 calendar days after the detention order is issued, unless extenuating circumstances exist. If the fourth calendar day is not a working day, FDA will advise the Department of Justice of its plans to recommend a seizure action on the last working day before the fourth calendar day and send the recommendation as soon as practicable on the first working day that follows. For purposes of this section, an extenuating circumstance includes, but is not limited to, instances when the results of confirmatory testing or other evidentiary development requires more than 4 calendar days to complete.

§ 1.384 When does a detention order terminate?

If FDA terminates a detention order or the detention period expires, an authorized FDA representative will issue a detention termination notice releasing the article of food to any person who received the detention order or that person's representative and will remove, or authorize in writing the removal of, the required labels or tags. If FDA fails to issue a detention termination notice and the detention period expires, the detention is deemed to be terminated.

How does FDA order a detention?

§ 1.391 Who approves a detention order?

An authorized FDA representative, i.e., the FDA District Director in whose district the article of food involved is located or an FDA official senior to such director, must approve a detention order. If prior written approval is not feasible, prior oral approval must be obtained and confirmed in writing as soon as possible.

§ 1.392 Who receives a copy of the detention order?

(a) FDA must issue the detention order to the owner, operator, or agent in charge of the place where the article of food is located. If the owner of the article of food is different from the owner, operator, or agent in charge of the place where the article is detained, FDA must provide a copy of the detention order to the owner of the article of food if the owner's identity can be determined readily.

(b) If FDA issues a detention order for an article of food located in a vehicle or other carrier used to transport the detained article of food, we also must provide a copy of the detention order to the shipper of record and the owner and operator of the vehicle or other carrier, if their identities can be determined readily.

§ 1.393 What information must FDA include in the detention order?

(a) FDA must issue the detention order in writing, in the form of a detention notice, signed and dated by the officer or qualified employee of FDA who has credible evidence or information indicating that such article of food presents a threat of serious adverse health consequences or death to humans or animals.

(b) The detention order must include the following information:

(1) The detention order number;

(2) The date and hour of the detention order;

(3) Identification of the detained article of food;

(4) The period of the detention;

(5) A statement that the article of food identified in the order is detained for the period shown;

(6) A brief, general statement of the reasons for the detention;

(7) The address and location where the article of food is to be detained and the appropriate storage conditions;

(8) Any applicable conditions of transportation of the detained article of food;

(9) A statement that the article of food is not to be consumed, moved, altered, or tampered with in any manner during the detention period, unless subject to a limited conditional release under § 1.381;

(10) The text of section 304(h) of the act and §§ 1.401 and 1.402;

(11) A statement that any informal hearing on an appeal of a detention order must be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in § 1.403;

(12) The mailing address, telephone number, e-mail address, and fax number of the FDA district office and the name of the FDA District Director in whose district the detained article of food is located; and

(13) A statement indicating the manner in which approval of the detention order was obtained, i.e., orally or in writing.

What is the appeal process for a detention order?

§ 1.401 Who is entitled to appeal?

Any person who would be entitled to be a claimant for the article of food, if seized under section 304(a) of the act, may appeal a detention order as specified in § 1.402. Procedures for establishing entitlement to be a claimant for purposes of section 304(a) of the act are governed by Supplemental Rule C to the ''Federal Rules of Civil Procedure.''

§ 1.402 What are the requirements for submitting an appeal?

(a) If you want to appeal a detention order, you must submit your appeal in writing to the FDA District Director, in whose district the detained article of food is located, at the mailing address, e-mail address, or fax number identified in the detention order according to the following applicable timeframes:

(1) *Perishable food*: If the detained article is a perishable food, as defined in § 1.377, you must file an appeal within 2 calendar days of receipt of the detention order.

(2) *Nonperishable food*: If the detained article is not a perishable food, as defined in § 1.377, you must file a

notice of an intent to request a hearing within 4 calendar days of receipt of the detention order. If the notice of intent is not filed within 4 calendar days, you will not be granted a hearing. If you have not filed a timely notice of intent to request a hearing, you may file an appeal without a hearing request. Whether or not it includes a request for hearing, your appeal must be filed within 10 calendar days of receipt of the detention order.

(b) Your request for appeal must include a verified statement identifying your ownership or proprietary interest in the detained article of food, in accordance with Supplemental Rule C to the ''Federal Rules of Civil Procedure.''

(c) The process for the appeal of a detention order under this section terminates if FDA institutes either a seizure action under section 304(a) of the act or an injunction under section 302 of the act regarding the article of food involved in the detention order.

(d) As part of the appeals process, you may request an informal hearing. Your request for a hearing must be in writing and must be included in your request for an appeal specified in paragraph (a) of this section. If you request an informal hearing, as defined in section 201(x) of the act, and FDA grants your request, the hearing will take place according to the following applicable timeframes:

(1) *Perishable food*: If the detained article is a perishable food, as defined in § 1.377, the hearing will be held within 2 calendar days after the date the appeal is filed.

(2) *Nonperishable food*: If the detained article is not a perishable food, as defined in § 1.377, the hearing will be held within 3 calendar days after the date the appeal is filed.

§ 1.403 What requirements apply to an informal hearing?

If FDA grants a request for an informal hearing on an appeal of a detention order, FDA must conduct the hearing in accordance with part 16 of this chapter, except that:

(a) The detention order under § 1.393, rather than the notice under § 16.22(a) of this chapter, provides notice of opportunity for a hearing under this section and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter.

(b) A request for a hearing under this section must be addressed to the FDA District Director in whose district the article food involved is located.

(c) The provision in § 16.22(b) of this chapter, providing that a person not be given less than 3 working days after receipt of notice to request a hearing, does not apply to a hearing under this subpart.

(d) The provision in § 16.24(e) of this chapter, stating that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing, does not apply to a hearing under this subpart.

(e) Section 1.406, rather than §16.24(f) of this chapter, describes the statement that will be provided to an appellant where a detention order is based on classified information.

(f) Section 1.404, rather than § 16.42(a) of this chapter, describes the FDA employees, e.g., regional food and drug directors or other officials senior to a district director, who preside at hearings under this subpart.

(g) The presiding officer may require that a hearing conducted under this section be completed within 1 day, as appropriate.

(h) Provisions of part 16 of this chapter that provide for the presiding officer to issue a report and recommended decision only do not apply. The presiding officer will issue the final agency decision.

§ 1.404 Who serves as the presiding officer at an informal hearing?

The presiding officer of an informal hearing on an appeal of a detention order, who also must decide the appeal, must be an FDA regional food and drug director or another FDA official senior to an FDA district director.

§ 1.405 When does FDA have to issue a decision on an appeal?

(a) The presiding officer must issue a decision confirming or revoking the detention within 5 calendar days after the appeal is filed. If FDA either fails to provide you with an opportunity to request an informal hearing, or fails to confirm or terminate the detention order within the 5-day period, the detention order is deemed terminated.

(b) If you appeal the detention order but do not request an informal hearing, the presiding officer must issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to confirm or terminate the detention order during such 5-day period, the detention order is deemed terminated.

(c) If you appeal the detention order and request an informal hearing and your hearing request is denied, the presiding officer must issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to confirm or terminate the detention order during such 5-day period, the detention order is deemed terminated.

(d) If the presiding officer confirms a detention order, the article of food continues to be detained until we terminate the detention under § 1.384 or the detention period expires under § 1.379, whichever occurs first.

(e) If the presiding officer terminates a detention order, or the detention period expires, FDA must terminate the detention order as specified under § 1.384.

(f) Confirmation of a detention order by the presiding officer is considered a final agency action for purposes of 5 U.S.C. 702.

§ 1.406 How will FDA handle classified information in an informal hearing?

Where the credible evidence or information supporting the detention order is classified under the applicable Executive order as requiring protection from unauthorized disclosure in the interest of national security (''classified information''), FDA will not provide you with this information. The presiding officer will give you notice of the general nature of the information and an opportunity to offer opposing evidence or information, if he or she may do so consistently with safeguarding the information and its source. If classified information was used to support the detention, then any confirmation of such detention will state whether it is based in whole or in part on that classified information.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

4. Section 16.1 is amended in paragraph (b)(1) by adding a new statutory provision in numerical order as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(1) * * *

Section 304(h) of the act relating to the adminstrative detention of food for human or animal consumption (see part 1, subpart k, of this chapter).

* * * * *

Dated: April 30, 2003.

Mark B. McClellan,

Commissioner of Food and Drugs.

Dated: May 5, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 03–11459 Filed 5–5–03; 5:08 pm]

BILLING CODE 4160–01–S

Federal Register

Friday,
May 9, 2003

Part VI

The President

Memorandum of May 6, 2003—Delegation of the Functions of the President Under the Heading "Iraq Relief and Reconstruction Fund" in the Emergency Wartime Supplemental Appropriations Act, 2003

Proclamation 7674—Mother's Day, 2003

Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of May 6, 2003

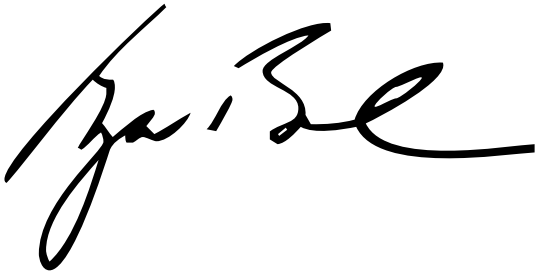
Delegation of the Functions of the President Under the Heading ''Iraq Relief and Reconstruction Fund'' in the Emergency Wartime Supplemental Appropriations Act, 2003

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Director of the Office of Managment and Budget

The functions of the President under the heading ''Iraq Relief and Reconstruction Fund'' in the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11), including with respect to apportionment, reimbursement, consultation, transfer of funds, retransfer of funds, and acceptance and crediting of contributions, are assigned to the Director of the Office of Management and Budget (OMB).

In accordance with Presidential direction relating to Iraq relief and reconstruction, multiple agencies are deployed with the Office of Reconstruction and Humanitarian Assistance (ORHA) and are serving as implementing partners or executing agents for programs and projects. These agencies will identify funding requirements for such programs and projects through ORHA. OMB will work with ORHA to transfer funds to the appropriate implementing agency. The Director of OMB shall coordinate with the Secretary of Defense or his designee prior to apportioning funds. With respect to programs administered by the Department of State or the United States Agency for International Development, the Director of OMB shall coordinate with the Secretary of State or his designee prior to apportioning funds.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 6, 2003.

[FR Doc. 03–11842
Filed 5–8–03; 10:40 am]
Billing code 3110–01–M

Presidential Documents

Proclamation 7674 of May 7, 2003

Mother's Day, 2003

By the President of the United States of America

A Proclamation

On Mother's Day, we honor the dedicated and caring women who are devoted to their families and committed to improving the world their children will inherit. Our first President, George Washington, said that his mother was ''the most beautiful woman I ever saw. All I am I owe to my mother.'' America owes much of its goodness and strength to mothers, including adoptive mothers, stepmothers, and foster mothers.

Mother's Day began as a day of love and friendship, designed to help heal families divided across battle lines during the Civil War. In 1914, President Woodrow Wilson signed a resolution officially establishing Mother's Day to honor the role of women in the family. On Mother's Day, 2003, we carry on the tradition by recognizing our mothers for their strength and compassion. We also recognize them for showing unconditional love and teaching positive values.

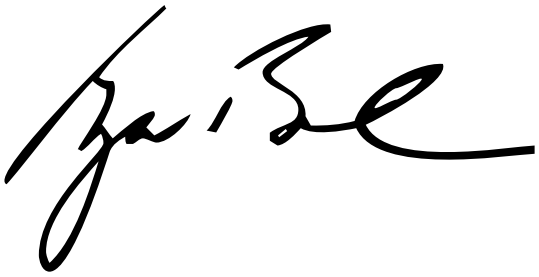
Mothers nurture a child's physical and emotional growth, nurse illness, ease failure, and cheer success. They instill important values in children and help provide the tools they need to make the right choices and grow up to be responsible, compassionate, and successful members of society.

As we honor our mothers on this special day, we celebrate their contributions to the character of our next generation of leaders. And we remember the lessons our mothers have taught us: That it is better to give than to receive, that we must love our neighbors as ourselves, and that service to others brings joy.

The Congress, by a joint resolution approved May 8, 1914, as amended (38 Stat. 770), has designated the second Sunday in May each year as ''Mother's Day'' and has requested the President to call for its appropriate observance. It is my honor and privilege to do so again.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 11, 2003, as Mother's Day. I encourage all Americans to express their love, respect, and appreciation to mothers everywhere for their contributions to their children, families, communities, and our Nation. I also call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, 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. 03–11843
Filed 5–8–03; 10:40 am]
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